



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

Appeal No. UA-2022-000752-T

[2022] UKUT 296 (AAC)

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

Before: Zachary Citron: Judge of the Upper Tribunal
David Rawsthorn: Member of the Upper Tribunal
Martin Smith: Member of the Upper Tribunal

Appellant: Kent Haulage Services Ltd

Representation

For the appellant: Mr K Hamilton, director of the appellant

Heard: remotely by CVP

On: 9 November 2022

Date of decision: 11 November 2022

DECISION OF THE UPPER TRIBUNAL

The appeal is dismissed.

Subject matter

Refusal of application for licence

Case referred to

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

REASONS FOR THE DECISION

The decision appealed against

1. The appellant appealed to the Upper Tribunal against a decision of the Traffic Commissioner (the “TC”) in a letter (the “**decision letter**”) dated 25 February 2022 (the “**decision date**”) refusing its application for a standard international operator’s licence under the Goods Vehicles (Licensing of Operators) Act 1995. (In what follows, references to “sections” or “s” are to sections of that Act, and references to “paragraphs” (unless the context otherwise indicates) are to paragraphs of Schedule 3 (*Qualifications for Standard Licence*) to that Act.)
2. The decision letter said that the application had been refused under s13(5). By way of explanation of that statutory reference (and citing the law as at 25 February 2022),
 - (a) under s13(5), the TC must refuse an application if the TC determines that any of the requirements that the TC has taken into consideration in accordance with s13(1) or (2) are not satisfied;
 - (b) under s13(1)(a), on an application for a standard licence, the TC must consider whether the requirements of s13A and 13C are satisfied;
 - (c) the “first requirement” in s13A included that the TC be satisfied that the applicant is (amongst other things) professionally competent (as determined in accordance with paragraphs 8 to 13) (s13A(2)(d));
 - (d) under paragraph 8, the requirement of professional competence falls to be satisfied by an individual; accordingly, where a company is required to satisfy that requirement, it does so if and so long as—
 - i. it has in respect of its road transport undertaking a transport manager or managers, and such number of them as the TC may require; and
 - ii. that transport manager, or (as the case may be) each such manager, is—
 - (a) of good repute, and
 - (b) professionally competent;
 - (e) under paragraph 9, where an individual is not himself professionally competent, he shall be regarded as satisfying the requirement of professional competence if and so long as he has as the transport manager of the transport undertaking which he carries on an individual who is—
 - i. of good repute, and
 - ii. professionally competent;

- (f) under paragraph 13 an individual shall be regarded as professionally competent if, and only if –
 - i. he has demonstrated that he possesses the requisite skills by passing a written examination organised by an approved body and is the holder of a certificate to the effect issued by that body; or
 - ii. he is the holder of any other certificate of competence, diploma or other qualification recognised for the purposes of sub-paragraph 13(1)(b) by the Secretary of State.
- 3. The decision letter said
 - (a) that the appellant’s licence application remained incomplete: the documentation requested had not been received by the TC, with no explanation as to why not;
 - (b) that the appellant had failed to demonstrate, from the information submitted, that it met all requirements for the licence; and
 - (c) that the reason for refusal of the appellant’s application was that there was no nomination of a qualified transport manager; therefore, it had failed to demonstrate that the appellant met the requirement for professional competence set out in s13A(2)(d).

Background facts per documentation before the Upper Tribunal

Events up to the decision date

- 4. The appellant’s online application to the TC for a licence, made on 22 September 2021, named Mr Hamilton as transport manager. Mr Hamilton did not then have the necessary qualification under paragraph 13 (and this remained the case at least up to the decision date).
- 5. The Office of the Traffic Commissioner (“**OTC**”) wrote to the appellant on 24 September 2021 saying that its application was incomplete and it must provide more information (which was listed in an annex to the letter), by 8 October 2021. The further information included
 - (a) “the nominated transport manager’s original certificate(s) of qualification of professional competence in road haulage”; the appellant was requested to “upload the full page to the online application”;
 - (b) a request to sign and date the appellant’s “transport manager application” – to be signed by both the transport manager and a director of the appellant.
- 6. OTC again wrote to the appellant on 4 November 2021 saying that certain additional information remained outstanding (including both items described above). The letter said it was a “final attempt” to resolve issues by correspondence and that the appellant must respond by 18 November 2021. It said: “If on that date

the application remains incomplete, it will be refused”. It asked for application-related documents to be uploaded through the appellant’s “VOL user account” and “only send documents by email if you are having problems with the self-service system”.

7. On 1 February 2022 Ms Gavin of OTC emailed Mr Hamilton asking him to access the self-service system and submit the “transport manager form”, or, alternatively, to complete and return an attached TM1 form with the nominated transport manager’s “CPC certificate”. She asked for this by 8 February 2022 and added: “failure to do so may result in refusal of your application”.
8. Mr Hamilton responded to Ms Gavin by email on 7 February 2022 saying that he was working on getting the transport manager qualification himself (he cited the expense of getting an “external” manager); he was awaiting the results of one exam and had booked for a multiple choice exam on 22 March. He asked if an interim licence could be awarded until he got his own qualification.
9. Ms Gavin responded on 11 February 2022 saying that a TM1 would need to be completed with a qualified transport manager named on the licence before an interim licence could be considered for grant. She asked him to nominate a new transport manager to the licence or withdraw the application and submit again once he held the required qualification. She said that the TC was unlikely to consider the application without a qualified transport manager named on the licence.

Events subsequent to the decision date

10. Mr Hamilton said in the appellant’s appeal form that on 21 March 2022 he sent “paperwork including a copy of my appointed transport manager’s qualification and details” via Royal Mail Special Delivery. He did not say in this form who this was sent *to*, but it appears (from what he said at the hearing) that it was sent to the Upper Tribunal and also to OTC. The appellant’s appeal form referred to the fact that, in an email dated 24 June 2022, Ms Courtney, a clerk to the Upper Tribunal, had said that the appellant’s appeal was “accepted” (i.e. admitted) since Mr Hamilton had emailed the Upper Tribunal on 20 May 2022 to say that he had sent the papers to the Upper Tribunal on 23 March 2022 and they had been signed for (though never found).

Grounds of appeal and Mr Hamilton’s statements in the hearing

11. In the appeal form, Mr Hamilton said that the appellant’s application for a licence had been refused because he had not been successful in passing the transport manager course in time. Mr Hamilton said in that form that he had managed to find another transport manager “just at the same time as the decision to decline was made (information must have crossed).” He said that he now had an appointed transport manager in post (Christopher Parry).
12. At the hearing, Mr Hamilton told the Upper Tribunal that
 - (a) he had sent information to the TC shortly before the decision date (he could not remember exactly when) indicating that Mr Parry, a qualified transport

manager, would be the transport manager for the appellant (in place of himself, as he was not then qualified);

- (b) he had done this because, sometime before the decision date, he had tried to change the name of the transport manager on the online application form, but had not been able to do so;
- (c) the action he took in (a) above is what he had meant in the appeal form by information “crossing” i.e. by Mr Hamilton’s account, he sent this material to the TC at or around the decision date;
- (d) he spoke to Ms Gavin of OTC (some time after the decision date) about his having taken the action in (a) above; Ms Gavin told him that OTC never received this material.

13. There was no documentary evidence before the Upper Tribunal of the matters set out at (a) and (b) above; in particular, those matters were not alluded to in the email correspondence between Ms Gavin and Mr Hamilton in February 2022, that was before the Upper Tribunal (see [7-9] above).

Jurisdiction of the Upper Tribunal

- 14. An applicant for an operator’s licence may appeal to the Upper Tribunal against refusal of the application: s37(1).
- 15. 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.
- 16. 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.
- 17. 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]).

The Upper Tribunal’s reasoning

- 18. The question for the Upper Tribunal is whether the TC’s decision to refuse the appellant’s application for a licence, on the ground that the requirement that the appellant have a transport manager who met the qualification requirements of paragraph 13 was not satisfied, was plainly wrong. The Upper Tribunal may only take into consideration circumstances as at the decision date.
- 19. It is clear that, as at the decision date, the transport manager named in the appellant’s application for a licence, Mr Hamilton, did not meet the qualification requirements of paragraph 13.

20. Even if we were to believe the statements of Mr Hamilton to the Upper Tribunal at the hearing (uncorroborated by documentary evidence), that he had sent information about a suitably qualified transport manager to OTC prior to the decision date, that does not affect the position that such information was never *received* by the TC prior to the decision date. In such circumstances – and given that, clearly, the TC had given the appellant ample opportunity to demonstrate that it had a suitably qualified transport manager (see [5-7] and [9] above) – it was not wrong of the TC to decide, on the information before her, that the requirement that the appellant have a transport manager who met the qualification requirements of paragraph 13, was not satisfied.
21. For completeness, we record that, on the balance of probabilities, we find that that Mr Hamilton did not in fact send such information to OTC prior to the decision date: we make this finding because (i) there was no reference to his doing so in the (active and regular) email correspondence between Mr Hamilton and Ms Gavin of OTC in the weeks immediately prior to the decision date; and (ii) OTC did not receive such information either prior to, or shortly after, the decision date.
22. As it was not wrong for the TC to have refused the appellant’s application for a licence on the ground set out in the decision letter, the appeal falls to be dismissed.

Zachary Citron
Judge of the Upper Tribunal

David Rawsthorn
Member of the Upper Tribunal

Martin Smith
Member of the Upper Tribunal

Authorised for issue on 11 November 2022