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SPECIALISTS IN REGULATORY LAW
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ROAD TRANSPORT FORUM

Operators have no absolute right to have a Public Inquiry adjourned

The fact that an operator who attends a Public Inquiry on the date fixed has a right to be heard does not mean that the operator has an absolute or unqualified right to have the Public Inquiry adjourned simply by claiming that the date is unsuitable. If that were the position, unscrupulous and non-compliant operators would be able to avoid being held to account at a Public Inquiry. Whether or not a Public Inquiry should be adjourned involves an exercise of discretion by the Traffic Commissioner.

This was held by the Upper Tribunal in a recent appeal case in which it had been argued that the Traffic Commissioner had been wrong not to grant a five month adjournment. They said that operators will only be called to a Public Inquiry for consideration of regulatory action if there is material before the Traffic Commissioner which appears to justify such a course. Since that material is likely to give rise to concerns in relation to road safety, fair competition and/or compliance with the regulatory regime there is likely to be a degree of urgency in resolving whether or not regulatory action is justified. Operators seeking an adjournment must understand that it is up to them to persuade the Traffic Commissioners that the reason for requesting an adjournment is good enough to justify granting an adjournment, that it is confirmed, whenever possible, by independent evidence and that the length of the adjournment requested will not be such as to give rise to unacceptable risks to road safety, fair competition and/or the proper enforcement of the regulatory regime.

Operators should also bear in mind that Traffic Commissioners are entitled to take into account the circumstances in which the request for an adjournment is made. It is important for operators to apply immediately it becomes apparent that there is a problem with the date fixed for the Public Inquiry. Those who wait until the last moment, (perhaps hoping that this will compel the Traffic Commissioner to grant an adjournment), may well find that they have simply aroused suspicion as to their motives and as to whether or not there are genuine grounds for adjourning.

The weight to be given to concerns about road safety, fair competition and compliance with the regulatory regime will vary according to the length of the adjournment being considered. It is simply a matter of common sense that the risk to road safety, fair competition and/or compliance with the regulatory regime will differ according to the length of time over which the risk must be run. The risk over a week or two may be acceptable if there is a good reason for an adjournment. The risk over five months or more will be much greater and may outweigh even a compelling reason for an adjournment.

Jared Dunbar of Dyne Solicitors comments

This decision highlights the importance of operators providing their legal advisors with the call up papers as soon as they are received. There is only a limited time to prepare for a Public Inquiry and every day matters. This decision states that adjournments should be requested as soon as possible and operators and their advisors shouldn't wait until the eleventh hour to make them. What is often the case, unfortunately, is that it is often only at the eleventh hour that the operator instructs their lawyers and this obviously doesn't provide us much data to demonstrate that any improvements we've recommended are working.

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Time limits for demonstrating compliance

The difficulties operators can face over ambiguous time limits laid down in reserved decisions by Traffic Commissioners have been explored by the Upper Tribunal in an appeal case involving a PSV operator who had appealed against the revocation of its licence for failing to provide the required information within the time limit laid down.

In a written decision dated 24 September the Deputy Traffic Commissioner concerned proposed to revoke the licence unless the company could satisfy him that it was indeed of appropriate financial standing within 14 days of the date of his decision.

The Tribunal said that although the decision is dated 24 September it was not sent to the appellant company until 25 September and the correspondence attached to the decision indicates that it was sent by first class and recorded delivery post. According to the company's solicitors, the letter and copy of the written decision were received on 26 September. Reference to the calendar shows that 'within14 days of the date' when the decision was signed and dated (but, in accordance with general legal practice, not counting that day) would expire at close of business on 8 October. If the date when the decision was actually sent to the company is taken as the material date, the period would expire at close of business on 9 October, and if the material date is taken to be the date when the written decision was received, the period would not expire until close of business on 10 October.

On 8 October a note was prepared by a case worker to the effect that no further financial evidence had been received. On 9 October the Deputy Traffic Commissioner decided that, in those circumstances, the licence should be revoked. Later that day, an original letter from the Royal Bank of Scotland (dated 9 October) was received at the Traffic Commissioner's office stating that the balance of the company's business reserve account contained a figure very much in excess of the financial standing requirement.

The fresh evidence and information was placed before the DTC immediately but he decided that it was too late.

The phrase "within 14 days of the date of this decision" would lead one to look at the date endorsed upon the face of the decision. However they would generally expect that form of words to be used if a decision was being delivered orally or was, in some other instantaneous way, drawn to the attention of the company without any delay and certainly on the same day.

Failing that, problems would inevitably arise with this type of time limit. For example, what happened if the decision was not posted for some days thereafter? Would it still be fair to hold that the clock started running just as soon as the DTC signed and dated the document, even if it then remained in the Traffic Commissioner's office for a few days before being sent out?

Time limits laid down by Traffic Commissioners were important. However, the company was only in a position to address the DTC's concerns after the written decision had been received. Consequently, it was not unreasonable that, upon receipt of the decision, it was then assumed that the company had 14 daysto comply.

For the future, as a matter of general guidance and to avoid uncertainty, we would suggest that time limits expressed in reserved written decisions be expressed by reference to a specific date – such as "… by no later than 16:00 hours on XX/XX/XXXX".

Jared Dunbar of Dyne Solicitors comments

Although this case is really about the ambiguity of time limits set by a Traffic Commissioner, it also highlights the importance of working to the worst case scenario deadline. In other words, if there is any doubt, assume the closest date is the deadline and work to that. As with the previous case, it emphasises the importance of acting quickly and not waiting a few days before dealing with correspondence.

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