



Appeal No.: UA-2021-000300-T
[2022] UKUT 144 (AAC)

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

**IN AN APPEAL FROM THE DECISION OF:
VICTORIA DAVIES, TRAFFIC COMMISSIONER FOR THE WALES
TRAFFIC AREA
DATED 29th SEPTEMBER 2021**

Before:

**Elizabeth Ovey, Judge of the Upper Tribunal
Andrew Guest, Specialist Member of the Upper Tribunal
Martin Smith, Specialist Member of the Upper Tribunal**

Appellant: SQUARE SCAFFOLDING LIMITED

Attendance: The Appellant did not attend and was not represented.

Heard at: Field House, 15-25 Breems Buildings, London EC4A 1DZ

Date of hearing: 10th May 2022

Date of decision: 27th May 2022

DECISION OF THE UPPER TRIBUNAL

IT IS HEREBY ORDERED that the appeal be DISMISSED.

SUBJECT MATTER: Assessment of financial standing; application for new licence

CASES REFERRED TO: *Coach Hire Surrey Limited v. Traffic Commissioner for the London and South East Traffic Area* [2020] EWCA Civ 1706, [2021] R.T.R. 20

REASONS FOR DECISION

Preliminary

1. This appeal concerns an application by Square Scaffolding Limited (“Square Scaffolding”) made on 5th July 2021 for a restricted goods vehicle operator’s licence authorising the operation of two vehicles. The application was eventually refused on 29th September 2021 on the ground that the applicant had not shown access to sufficient financial resources. We deal below with the background to that decision and the merits of the appeal, but first address a number of preliminary matters.

2. Square Scaffolding is a company which was incorporated on 1st June 2021 with two directors, Mr. Dylan Keane and Mr. Joseph Lane (“Mr. Lane”). All the contact with the Office of the Traffic Commissioner (“the OTC”) was made by Mr. Lane and in the notice of appeal dated 25th October 2021 Mr. Lane describes himself as the appellant. It is, however, clear from the grounds of appeal that Mr. Lane was acting on behalf of Square Scaffolding, which has the statutory right of appeal under s.37(1) of the Goods Vehicles (Licensing of Operators) Act 1995, and we treat the appeal as having been brought by Square Scaffolding.

3. The decision under appeal is recorded in an internal email sent by Daniel Hudson (“Mr. Hudson”), a Licensing Team Leader, to caseworkers on 27th September 2021 in response to a recommendation for refusal sent to him on 24th September 2021 by Anna Sparks (“Ms. Sparks”), the caseworker primarily involved. The decision letter refusing the application is signed on behalf of Ms. Sparks. Under s.13 of the 1995 Act a decision on an application for a standard or restricted licence is to be made by the traffic commissioner (“TC”), but s.74 of the Deregulation and Contracting Out Act 1994 allows TCs, among others, to delegate functions under any enactment. The performance of a function so delegated is to be treated for all purposes as the act or omission of the TC. The Senior Traffic Commissioner’s Statutory Document No. 8 contains guidance and directions as to the functions which a TC may delegate to members of his or her staff, and makes provision for the delegation of refusal of an application which is incomplete to a Team Leader. We would not expect to be provided with more detailed evidence of delegation and accordingly proceed on the basis that the power to make the decision was properly delegated.

4. The hearing was not attended either by Mr. Lane on behalf of Square Scaffolding or by any other representative. The case file shows, however, that Square Scaffolding was duly notified of the date and asked whether attendance was necessary. It was informed that attendance was not necessary but the hearing would proceed if there was no attendance. We are satisfied that Square Scaffolding was aware of the hearing but chose not to attend, and we can properly proceed to determine the appeal.

The legal context

5. Under s.13(2) of the 1995 Act, on an application for a restricted licence the TC must consider whether the requirements of ss.13B and 13C are satisfied and, if the TC

thinks fit, whether the requirement of s.13D is satisfied. Under s.13(5), if any of the requirements taken into consideration are not satisfied, the application must be refused. S.13D provides:

“The requirement of this section is that the provision of the facilities and arrangements for maintaining the vehicles in a fit and serviceable condition (see section 13C(4)) is not prejudiced by reason of the applicant's having insufficient financial resources for that purpose.”

6. The Act does not give a definition of what constitutes sufficient financial resources for the purposes of this provision, but that question is answered by Statutory Document No. 2. Like other Statutory Documents, Statutory Document No. 2 consists of both guidance (paragraphs 1-28), which is guidance strictly so called, and directions (the remainder of the Document), which are requirements to be followed: see s.1(2) of the 1995 Act, authorising the giving of general directions and guidance, and *Coach Hire Surrey Limited v. Traffic Commissioner for the London and South East Traffic Area* [2020] EWCA Civ 1706, [2021] R.T.R. 20, which discusses the comparable distinction drawn in the Public Passenger Vehicles Act 1981: Paragraph 30, which forms part of the general directions, directs that the level of financial resources required for a restricted licence is as set out in the accompanying table and further directs that checks on financial standing must be made on an application for a restricted licence as they are in other cases. (An applicant for a standard licence must always show financial standing under s.13A, whereas s.13, unsupplemented by the Statutory Document, gives discretion in relation to the s.13D requirement.) The table provides that an applicant must show financial resources of £3,100 for the first vehicle and £1,700 for each subsequent vehicle.

7. By way of direction as to what constitutes acceptable evidence of resources, paragraph 51 of Statutory Documents No. 3 states:

“Where on application (new or variation) and at 5 yearly review, bank or building society accounts are relied upon, original statements must be supplied for the past 28 days, the last balance of which must not be more than 2 months from the date of receipt of the application. Where applications are made digitally, electronic copies of original documents and internet statements can be uploaded with the application, however the traffic commissioner and staff acting on their behalf reserve the right to request originals. The average balance over this period will be calculated, (see Annex 5) and added to any overdraft or credit facility demonstrated by a formal written commitment by the bank, etc... Unusually large deposits/withdrawals which have influenced the balance might lead to further enquiries and a request for an explanation from the applicant/operator. The traffic commissioner might ultimately decide to discount these deposits/withdrawals from the balance. If there is any doubt as to the source of funds this should be referred to the traffic commissioner.”

8. Annex 5 requires an applicant who is relying on bank or building society statements as evidence of financial standing to provide statements covering at least four full weeks. The average balance is then calculated by taking the balance at the latest date, the balance 27 days earlier and the two best balances in between, adding them

together and dividing the total by 4. If that produces a figure above the required figure, the applicant has satisfied the financial requirement.

9. Paragraph 54 recognises that if the business is new, the full run of bank statements may not be available. In that case it may be possible to rely on a sufficient opening balance, with an explanation of the source of funds, but the licence is likely to be subject to a condition for further financial review.

The facts

10. As already stated, Square Scaffolding applied for a licence on 5th July 2021. It used the electronic facility and completed the information required for an online users account, giving an icloud email address for correspondence: see pp.346-347 of the bundle. It also uploaded what appears to be an account statement with what looks like a sort code and account number for an account in the name of Square Scaffolding Limited showing a balance of £64,582 at 28th June 2021 and a number of transactions (but no other balances) described as “uncategorised”. In response the OTC replied by letter dated 14th July 2021 stating that the application was incomplete and requiring further information no later than 28th July 2021. The information requested included financial information along the lines set out in paragraph 51 of Statutory Document No. 2.

11. Square Scaffolding provided further information under cover of an email dated 19th July 2021, but did not address the request for financial information. The following day Mr. Lane sent a further email, saying that he had forgotten to send the bank statement and attaching it. The statement was for a “Tide” account with the account number of the statement previously uploaded but in the name of Ten Plus Property Limited (“Ten Plus Property”). The transactions shown in the previous statement appear again, but this time with account balances and the description “re Square Scaffolding”. The statement is said to cover the period 1st to 30th June 2021, but in fact the earliest transactions shown are on 26th June 2021 and consist of payments in from “Mortgag Lane Ltd ref: Loan” of sums of £50,000 and £15,500, producing a balance of £65,000. There is a further sheet in our bundle at p.81, apparently constituting a “statement at June 2021”, which states simply “Tide current account [reference] £0.00 Square Scaffolding Ltd. [reference to the account identified in the statement] £536.59”

12. Mr. Lane’s explanation for the appearance of Ten Plus Property in his email of 20th July 2021 reads:

“You’ll see this is named Ten Plus property, this was an account I opened a year ago for a property business that didn’t not (*sic*) progress. Leaving the account open I went to open an account for Square Scaffolding, it only seemed to open a sub account on Ten plus instead.

My accountant has advised me that this is fine and the account can remain this way until I have a meeting open a new account with Barclays.

Tide was the only bank opening in 2 days so of course we needed to use them initially.

I've attached a print screen that shows the account name as Square Scaffolding.”

We take the reference to the print screen to be a reference to the document at p.81.

13. The OTC was not satisfied with the information provided and wrote to Square Scaffolding on 30th July 2021 requiring outstanding information to be produced by no later than 13th August 2021. The letter warned that if on that date the application remained incomplete, it would be refused. It also asked that the documents be uploaded through the online users account. The requested information included financial evidence in Square Scaffolding's name showing a sum of £4,800 to have been available during a 28 day period and an explanation of why the bank statements for Ten Plus Property had been submitted.

14. This request was repeated in an email dated 19th August 2021 from Ms. Sparks to Mr. Lane, with the deadline extended to 26th August 2021. It appears from the internal notes at p.343 of the bundle that an attempt had been made to telephone Mr. Lane before the letter dated 30th July 2021 was sent and that Ms. Sparks had succeeded in speaking to Mr. Lane on 19th August 2021, on which occasion he said he would submit all the documents that day.

15. Square Scaffolding through Mr. Lane did indeed provide further information by email that day. Mr. Lane explained he could not access the online portal. As respects financial information, what was produced was a Barclays statement relating to an account in the name of Square Scaffolding which stated “Showing 15 transactions between 11/08/2021 and 19/08/2021 from 20/07/2021 to 19/08/2021”. The transactions shown begin with an opening credit of £450 followed by a credit of £4,431.30 from Ten Plus Property described as “new account”. Both of these were counter credits. There was thus a balance on 11th August 2021 of £4,881.30 which then diminished through several payments out until a credit was received on 19th August 2021 in the sum of £1,800, described as “directors loan”. That produced a closing balance of £4,861.18, just sufficient to meet the requirement. Clearly, however, it had not been met for a period of 28 days, at least on the basis of the Barclays account.

16. On 25th August 2021 Mr. Lane sent Ms. Sparks an email asking how she was getting on with the application. She replied asking for (i) information as to the bank statements from Ten Plus Property, the deposit to Square Scaffolding from Ten Plus Property and the directors loan deposit (ii) a letter from Barclays confirming that the account holder was Square Scaffolding Limited (since “Limited” did not appear on the statements) and (iii) any other evidence showing the full name of the company.

17. Mr. Lane replied on behalf of Square Scaffolding by an email sent on 31st August 2021. He attached a copy of Square Scaffolding's Barclays cheque book which related to the account in question and was in the full name Square Scaffolding Limited. He referred to his email of 20th July 2021 but repeated that he could not open a high street bank account quickly due to Covid and so went to Tide “who are a lot quicker”. He did not at first realise that it was not a new account but a sub account of Ten Plus Property. He also attached a CSV file of the Tide account which was described as “showing my balance being moved” from Ten Plus Property to Square Scaffolding in the last five entries. The CSV file is not as helpful as it might be, since the dates are

not discernible, but there is an entry for the transfer of £4,431.30 having the reference “Square S new account”. There are also two further similar transfers, for £447.40 and £350.

18. On 8th September 2021 Mr. Lane sent an email to Ms. Sparks asking for an update. It appears from the internal notes at p.343 of the bundle that Ms. Sparks then referred the matter to Mr. Hudson, who advised that as the Barclays statement showed a sufficient closing balance but not the necessary average balance for 28 days financial undertakings should be sought. This led to a further email from Ms. Sparks on 13th September 2021 asking for Square Scaffolding’s most recent 28 days of bank statements and an undertaking to provide further financial evidence covering the period from the beginning of the third month after any grant of the application to the end of the fifth month.

19. Mr. Lane responded on 15th September 2021 by sending Ms. Sparks the Barclays statement appearing at pp.158-159 of the bundle. It is stated to cover the period 5th August to 2nd September 2021 and shows the account as having been opened on 5th August 2021 with a balance of £0.00. The first transaction is the credit of £450 referred to in paragraph 15 above. Further transactions are shown down to 16th August 2021, with a closing balance of £3,411.25 appearing at the bottom of the page. The following page begins with a balance brought forward figure of £3,486.86 and records one further transaction on 2nd September 2021. Mr. Lane also attached the signed undertaking to his email of 15th September 2021.

20. Ms. Sparks replied on 16th September 2021 to the effect that the bank statements provided could not be accepted since they did not show 28 days of transactions and pointing out that there seemed to be missing pages. Mr. Lane sent further statements later that day, explaining that the statements had not scanned properly. The new set of statements is at pp.183-186 in the bundle and does appear to cover the whole of the period 5th August to 2nd September 2021.

21. Ms. Sparks was thus enabled to carry out the calculation required by Annex 5 of Statutory Document no. 2. The calculation sheet is at p.187 of the bundle and shows an average of £3,104. Although arithmetically it appears to be correct, we note that in addition to the opening and closing balances Ms. Sparks has used the balances at 24th and 26th August, of £4,563 and £4,511 respectively. We do not quite follow this, since the balance on 11th August 2021 was £4,881 and the balance on 19th August was £4,861, as already noted. Even if those higher balances were used, however, the average would only increase to £3,271, which would still be significantly below the requirement of £4,800. Further, it was no longer the case that the most recent closing balance taken in isolation met the requirement, so that in accordance with the Statutory Document the lack of a sufficient period of meeting the requirement could be addressed through a financial undertaking.

22. Ms. Sparks therefore sent an email to Mr. Lane on 21st September 2021 marked as sent with high importance explaining that the calculation did not show Square Scaffolding had access to the £4,800 needed to justify authorisation for two vehicles and the OTC would be able to grant the application for one vehicle only. The alternative was that the application would be refused. Mr. Lane was asked to let her know if he wished to go ahead with only one vehicle.

23. By the afternoon of 24th September 2021 Ms. Sparks had received no reply on behalf of Square Scaffolding. She therefore sent an email to Mr. Hudson explaining the current position and expressing the view that the application should now be refused. In response Mr. Hudson sent the email of 27th September 2021 referred to in paragraph 3 above. It summarised the exchanges set out above and concluded that the application was refused under s.13(5) of the 1995 Act as s.13D had not been satisfied for the two vehicles which had been applied for.

24. The terms of the internal email from Mr. Hudson were reflected in the decision letter dated 29th September 2021, which stated:

“The traffic commissioner has refused your application under Section 13(5) of the [1995] Act. You have failed to demonstrate, from the information submitted, that you meet all requirements for the licence. The application was refused for the following reason(s):

The financial information provided was not acceptable because it did not show sufficient finances of an average balance over the required period. Therefore, you have failed to demonstrate that you meet the requirements of Section 13D of the [1995] Act, which requires that there are sufficient financial resources for maintaining vehicles in a fit and serviceable condition.”

25. On 8th October 2021 a Callie Jones using Mr. Lane’s email address responded to Ms. Sparks’ email of 21st September 2021 apologising for the delay, attaching a more recent bank statement and asking to proceed with two vehicles. Ms. Sparks replied that day explaining that the OTC had emailed Square Scaffolding on 29th September 2021 informing the company that the application was refused. She said that there was nothing she could do.

26. That elicited the following reply from Mr. Lane:

“I would like to appeal this, we have sent information over several times. Also, we have not had your email dated 20/09/2021 – please can you forward us a copy of this?
We have tried to call over 100 times to discuss the case, but not once have you picked up.
I called again just now, no answer.
Please see enclosed a bank statement showing the funds you require.
I really want to provide everything to you quickly and exactly how you want it, so please can you call me next time to avoid any correspondence not being received whereby you are threatening to refuse our application.”

27. In response Ms. Sparks sent an email attaching a copy of the decision letter, which contained information about appealing. Mr. Lane replied later that day asking if she could attach a copy of the email which was sent as evidence that the decision letter was actually sent on 29th September 2021 or alternatively the OTC’s complaints process. He also stated that the decision was being appealed with full evidence of the correspondence.

28. The bank statements provided with the emails of 8th October 2021 show the transactions between 8th September and 8th October 2021. It can be seen that up to and including 7th October 2021 Square Scaffolding's balance at the end of the day never reached the level of £4,800. On 8th October 2021, however, a sum of £10,000 was transferred in, producing a balance of £12,220.62 (although the available balance is stated to be £12,026.62). The statement does not show where the transfer came from.

The appeal

29. In the appeal notice the grounds of appeal are given as follows:

“On the 21st September 2021, we received an email from Anna Sparks stating the financial calculator is showing that we do not have access to the requested £4,800 which is required for the authority of two vehicles. On the 8th October 2021 I replied to Anna attaching a bank statement showing more funds available and asked to proceed with the two vehicles.

On the 8th October 2021 Anna replied stating that the company were emailed on the 29.09.2021 informing that the application is refused and there is nothing she can do about it now. She also stated that we have been emailed loads of times and gave a few extra days to provide financial evidence. I can confirm that we did not receive an email or any correspondence after the 21st September from yourselves. It is only once we sent proof of financial evidence that Anna attached a refusal letter dated 29.09.2021. Subsequently, this letter was sent via Royal Mail and was signed for on the 12th October 2021- please see attached the proof of this.

Lastly, I have also attached a copy of our bank statement again which shows our available funds.”

30. It seems clear to us that by 29th September 2021 Square Scaffolding had not succeeded in demonstrating that it satisfied the requirements of s.30D of the 1995 Act as supplemented by Statutory Document No. 2.

31. In those circumstances the first question for us is whether the TC, acting through Mr. Hudson, could properly come to a decision on that date, nearly three months after the date of the application. If so, no criticism can be made of the substance of the decision, that Square Scaffolding had not shown sufficient financial resources in accordance with the requirements of s.13D as supplemented. Refusal of the application was then necessary in the light of s.13(5).

32. As Mr. Lane was informed by the letter dated 14th July 2021, the OTC aims to have a decision on most applications within 40 working days, which in the present case would be 30th August 2021, eight weeks after the date of the application. The deadlines specified for the receipt of information are intended to assist in keeping to that sort of timescale. Further, as explained in Statutory Document No. 8, incomplete applications lead to delay in dealing with applications generally; while it is appropriate to give applicants an opportunity to address outstanding issues, if they fail to do so the application should be referred for decision.

33. Bearing that context in mind, we do not think that there was any error on the part of Mr. Hudson in proceeding to reach a decision when he did. An applicant for a licence can reasonably be expected to know or to find out the requirements which have to be satisfied. The information is readily available on the internet. An applicant can also be expected to ensure that those requirements can be satisfied. While a new business may face difficulties in showing access to financial resources over a period, Statutory Document No. 2 makes allowance for that.

34. In the present case, it seems that insufficient consideration was given by Square Scaffolding to how the financial resources requirement might be met. We find difficulty in following the explanation given of the involvement of Ten Plus Property. While recognising that no detailed search of the Companies House website seems to have been made by the TC, we have ourselves looked at the website, which shows the following.

35. Mr. Lane is one of the two directors of Ten Plus Property, which was incorporated on 15th October 2020 with a nominal share capital of £100, half of which was held by Mr. Lane and the other half by the other director. On 5th March 2021 Mr. Lane transferred his shareholding to Lane Co Holdings Limited, of which Mr. Lane is the sole director. That company was incorporated on 18th February 2021 with a nominal share capital of £1 held by Mr. Lane himself. As far as can be seen, and consistently with what Mr. Lane said, Ten Plus Property has not engaged in any activity and its bank balance on 1st June 2021, when Square Scaffolding was incorporated, was £0.00. Total payments of £65,000 were made to its Tide account on 26th June 2021 by way of loan from Mortgage Lane Limited, a company which the Companies House website shows to have a sole director, Mr. Lane. It was incorporated on 30th April 2018 with a nominal capital of £1 and its accounts as at 30th April 2020 show net assets of £28,848. By 30th April 2021 that figure had grown to £151,936. Mr. Lane initially held the only share but on 5th March 2021 he transferred that share to Lane Co Holdings, which also holds 51 of the issued shares in Square Scaffolding, the other 49 being held by Mr. Keane, the other director. Mr. Lane is also a director of Lane Property Holdings Limited, incorporated on 15th May 2020 with a nominal share capital of £100 held equally by Mr. Lane and Mr. Andrew Peter Lane and again on 5th March 2021 Mr. Lane transferred his shareholding to Lane Co Holdings Limited. The Barclays statement shows two credits to Square Scaffolding from Lane Property Holdings Limited in September 2021.

36. There is thus a picture of several small companies with common directors and shareholders, only one of which appears to have substantial assets. It remains the case that there is no explanation for the payment of £65,000 from Mortgage Lane Limited to Ten Plus Property at the end of June 2021. In so far as the statement at p.139 suggests that it may have been a mortgage loan, questions arise as to the security given and whether there is an inter-company indebtedness. Moreover, although there are numerous references in one form or another to Square Scaffolding in the Ten Plus Property account statements, nothing like £65,000 has been transferred from the Tide account to the Barclays account. This raises questions about whether the balance in the Tide account belongs to Square Scaffolding through the sub-account arrangement or whether it belongs to Ten Plus Property. We note further that Square Scaffolding appears to have abandoned any attempt to rely on the balance remaining in the Tide account after the Barclays account was opened. Stepping back a little from the detail,

we find it surprising that a bank asked to open an account for Company A should instead set up a sub-account for Company A as a feature of an account for Company B.

37. We do not say that all this could not have been explained, but it seems to us that these complexities and uncertainties could have been avoided if Square Scaffolding had taken steps immediately upon its incorporation to open a bank account in its own name into which any funds necessary to enable it to start operations could have been paid and the statements from which could have been used to establish financial standing.

38. After the initial difficulties with the Tide account, when Square Scaffolding had opened its Barclays account, there was simply a failure to retain sufficient funds in that account. Instead there is a picture of a topping up of the account just before the statement was sent to the OTC, as appears from the statements sent on 19th August 2021 and 8th October 2021. As respects the 19th August 2021 statement, we cannot see that the query raised as to the directors loan payment was ever answered.

39. Much of this history, although not the material derived from the Companies House website, was referred to in Mr. Hudson's email of 27th September 2021 and in our view was properly taken into account when he decided that the time had come to refuse the application. We are of course aware that Square Scaffolding has not had an opportunity to comment on the Companies House material and we should make clear that our conclusion that there was no error in the TC's decision does not depend on that material, which does no more than underline the point that Square Scaffolding's sources of funds were unclear and the explanations given themselves lacked clarity. Our decision is based on the simple fact that by 29th September 2021, after being given a reasonable opportunity to demonstrate that it had sufficient financial resources, Square Scaffolding had failed to do so.

40. We note in particular that Square Scaffolding had been offered the option of a licence authorising one vehicle, for which the necessary financial resources had been shown, and had not replied to that offer a week later, when the decision was made. The impression created by the events of 8th October 2021 is that Square Scaffolding spent the period between 21st September and 8th October 2021 in searching for a sufficiently substantial injection of funds, disregarding the warnings about refusal given in the correspondence. We think that Mr. Lane's assertion in his email of 8th October 2021 that "I really want to provide everything to you quickly and exactly how you want it" came too late in the day and was not borne out by the approach taken earlier by Square Scaffolding.

41. The grounds of appeal do not in fact draw attention to any specific features of the correspondence prior to the decision, but in the absence of further representations on behalf of Square Scaffolding we have considered it in detail to see whether it points to any error on the part of the TC. For the reasons given, we do not think it does. We note that the grounds of appeal do not suggest that the decision was wrong at the time it was taken. Instead Square Scaffolding makes two points:

- (1) by 8th October 2021 there were further funds in the Barclays account;
- (2) it did not receive the letter dated 29th September 2021 until after 8th October 2021.

42. The first of those points does not assist Square Scaffolding if the decision was properly made on 29th September 2021 as we have concluded was the case. It was clear from Ms. Sparks' email of 21st September 2021 that a licence authorising two vehicles would not be forthcoming and if Square Scaffolding chose to remain silent for a period while seeking for additional funds to justify authorisation for two vehicles it ran the risk that the application would simply be refused.

43. The second of those points similarly does not assist. We are willing to accept that Square Scaffolding did not receive a copy of the decision by post until 12th October 2021, but any delay in notification could not undo the fact that the decision had been made. The position is the same as if the decision had been received on 29th September 2021 itself. Further, p.349 of the bundle shows an email notification sent on 29th September 2021 to the icloud address given by Square Scaffolding for licensing communications via the online service informing Square Scaffolding that important documentation was in the correspondence inbox. P.353 of the bundle shows that a further notification was sent on 2nd October 2021 urging Square Scaffolding to log on to view the correspondence as soon as possible. If Square Scaffolding had any suspicion that the decision letter was written after 8th October 2021 but antedated, or written and not sent, as the email correspondence of 8th October 2021 might seem to suggest, we think it is clear that that suspicion was misplaced and the decision was duly sent on 29th September 2021 by the means agreed. Presumably the explanation is simply that Mr. Lane did not look at the icloud email address.

44. We note what Mr. Lane says about difficulties in making contact with the OTC by telephone. The email communications from the OTC carry a standard warning that staff are working from home owing to the pandemic and reduced telephone cover is being provided. The difficulties may have been unfortunate but are understandable. We also note that Mr. Lane's emails do not seek clarification of what Square Scaffolding was being asked to provide. We have referred to this point for completeness, but it does not take Square Scaffolding anywhere.

45. In those circumstances, we do not express any conclusion as to whether the material produced on 8th October 2021 was sufficient to show that Square Scaffolding satisfied s.13D in relation to two vehicles. If, however, it has maintained balances at that level in its bank account, it may well be that a new application would be successful.

46. For the reasons given above, we dismiss the appeal.

(signed on the original)

E. Ovey
Judge of the Upper Tribunal
27th May 2022