



WEST MIDLANDS TRAFFIC AREA
DECISION OF THE TRAFFIC COMMISSIONER
PUBLIC INQUIRY HELD IN BIRMINGHAM ON 17 APRIL 2018
OPERATOR: MICHAEL JOHN PHILBIN
LICENCE OD1045630

Decision

1. The restricted goods vehicle operator's licence held by Michael John Philbin is revoked with immediate effect, pursuant to Sections 26(1)(c)(ii) and (iii), (f) and (h) of the Goods Vehicles (Licensing of Operators) Act 1995 ("the 1995 Act").
2. Michael John Philbin and Rachael Philbin are disqualified indefinitely from holding or obtaining any type of operator's licence in any traffic area and from being the directors of any company holding or obtaining such a licence, pursuant to section 28 (1), (4) and (5) of the 1995 Act.

Background

Operator details

1. Michael John Philbin holds a restricted goods vehicle operator's licence (OD1045630) for three vehicles, with an operating centre at Weston Farm Oswestry SY10 9ER. The licence was granted in 2005.

DVSA reports

2. In spring 2018 I received reports from DVSA vehicle examiner Dyfrig Williams and traffic examiner Marianne Hyde whose investigations into the operator had found that:
 - i) the operator's vehicle TRA 5H had been given an S-marked prohibition (denoting a serious failure of maintenance) on 3 August 2017 after a tyre blow-out in service had rendered rear stop and indicator lights inoperable. The driver had nevertheless continued to drive the vehicle a considerable distance after replacing the tyre;
 - ii) the driver of the vehicle on 3 August did not possess the necessary C category entitlement to drive the vehicle. Nor did he possess a driver CPC;
 - iii) the vehicle was operating without an MOT, the MOT having expired at the end of June 2017;

- iv) the driver was not using a tachograph on a journey where EU rules applied;
- v) the vehicle was being operated by a limited company, MJP Recycling Ltd, rather than by Michael Philbin as a sole trader;
- vi) few safety inspection records were available for the operator's vehicles;
- vii) the operator could not produce any tachograph data; Rachael Philbin (Michael Philbin's spouse who was responsible for much of the operation while he was ill) erroneously believed that tachographs did not have to be used on 7.5 tonne vehicles;
- viii) Rachael Philbin had claimed that the operator's second specified vehicle, DG17 BXR, had only been used on the public road for private business. However, TE Hyde obtained evidence from Veolia that the vehicle had collected waste from one of their sites on six occasions in a four week period in October 2017. It was clearly in commercial use.

Public inquiry

Call-up

3. I noted that in late 2017 Michael Philbin had applied to surrender the licence, but owing to the serious issues identified by DVSA's report I decided not to accept the surrender but to call the operator to a public inquiry. The call-up letter was sent on 13 March 2018, citing Sections 26(1)(c)(i), (ii) and (iii), (f) and (h) of the 1995 Act.

Holding of public inquiry

4. The inquiry was held in Birmingham on 18 April 2018. The operator did not attend, having informed my clerk that he was in ill health.

Findings

5. After considering the evidence I reached the following findings:
 - i) there has been a change of entity in that the operator of the vehicles since 2012 has been the company MJP Recycling Ltd, of which Michael Philbin is the sole director and Rachael Philbin secretary (Section 26(1)(h) of the 1995 Act refers);
 - ii) the operator's driver has been convicted of driving otherwise than in accordance with a licence and without a CPC qualification (Section 26(1)(c)(ii) refers). The operator failed to notify this conviction to my office;
 - iii) the operator has failed to fulfil its undertakings to keep vehicles fit and serviceable, to retain maintenance records for 15 months, to ensure that drivers hours and tachograph rules are observed, and to ensure the lawful operation and driving of vehicles (Section 26(1)(f) refers);
 - iv) the operator's vehicles have incurred roadworthiness prohibitions in August and September 2017 (Section 26(1)(c)(iii) refers);
 - v) Rachael Philbin was untruthful when she stated to DVSA that vehicle DG17 BXR was used only on private business. She is the controlling mind of the licence and her untruthfulness and failure to comply with even the most basic requirements of HGV operation make the operator unfit to hold a licence.

Conclusions

Revocation of the licence

6. A heavy goods vehicle operated by Michael Philbin was driven without an MOT, in an unroadworthy condition, without an MOT, by someone not using a tachograph and without a licence to drive it. The operator had no system to ensure regular maintenance and was wholly unaware of the fact that EU drivers' hours rules applied to its operations. Given the operator's grotesque failure to abide by so many of the requirements relating to the safe and lawful operation of vehicles, revocation of the licence is the inevitable outcome. The revocation has immediate effect.

Disqualifications

7. Because of the very serious findings outlined above, I conclude that Michael John Philbin deserves to be disqualified under Section 28 of the 1995 Act from holding a licence in the future. I am making the disqualification indefinite, as he failed to attend the public inquiry. He is free to request a hearing in the future at which to argue for a time limit to be placed on the disqualification. But, unless exceptional mitigating circumstances can be shown to have existed, I do not envisage that the period of disqualification could be reduced to below five years.
8. Because Rachael Philbin has been the person with de facto responsibility for the licence, I am also disqualifying her for the same period of time – indefinite - as Michael Philbin. The same considerations apply as for Mr Philbin above relating to any possibility of putting a time limit on the disqualification.



Nicholas Denton
Traffic Commissioner
17 April 2018