



WEST MIDLANDS TRAFFIC AREA

DECISION OF THE TRAFFIC COMMISSIONER

PUBLIC INQUIRY HELD IN BIRMINGHAM ON 28 FEBRUARY 2018

OPERATOR: PETER TERENCE GORE

LICENCE OD0262395

Decision

1. The restricted goods vehicle operator's licence OD0262395 held by Peter Terence Gore is revoked with immediate effect pursuant to Sections 26(1)(c)(iii), (e), (f) and (h) of the Goods Vehicles (Licensing of Operators) Act 1995 ("the 1995 Act").
2. The *de facto* operator of the licence John Spencer Gore is disqualified for a period of eight years, until 1 March 2026, from holding or obtaining any type of operator's licence in any traffic area and from being the director 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. Peter Terence Gore holds a restricted goods vehicle operator's licence (OD0262395) for two vehicles. The licence was granted in June 1997 and has one vehicle currently specified on it. The authorised operating centre is at Shoothill Farm, Ford, Shrewsbury SY5 9NR.

DVSA reports

2. On 4 August 2017 the operator's specified vehicle MX03 MZD, driven by John Spencer Gore (Peter Gore's son), was involved in a traffic collision when it ran into the back of a queue of vehicles. At the request of the police, DVLA vehicle examiner Dyfrig Williams inspected the vehicle. He found that:
 - i) the vehicle had no current MOT: the last MOT on record was dated 23 August 2012 and had therefore expired on 31 August 2013;
 - ii) the vehicle was not taxed;

- iii) the vehicle was using red diesel;
 - iv) the front nearside tyre was bald on the outer edge over the whole of its circumference;
 - v) further defects found included:
 - a) an insecure sideguard attached with cable tie;
 - b) offside rear wing section missing;
 - c) nearside spray suppression equipment insecure;
 - d) brake disc fractured (axle 3, offside);
 - e) suspension shackle pin excessively worn;
 - f) body mounting brackets fractured;
 - g) offside stop light inoperative;
 - h) brake pipe excessively kinked;
 - i) rear marking not clearly visible from rear.
3. The vehicle was issued with an S-marked prohibition, denoting a serious failure in maintenance.
4. VE Williams noted that despite the vehicle being out of MOT since August 2013, there were around ten or more recent M6 Toll receipts in the cab. John Gore subsequently accepted when interviewed by traffic examiner Marianne Hyde that he had on these occasions used the vehicle to fetch straw from Silverstone in Northamptonshire. He had also used the vehicle on an infrequent basis to take animals to abattoirs in Shrewsbury and Ellesmere. He could not produce any tachograph charts, stating that the file was "gone". Nor could he produce any maintenance records for the vehicle.
5. Ms Hyde also met the licence holder Peter Gore. He stated to her that "I had nothing whatsoever to do with it [the licence]", "All I did was sign the cheque" [for renewal of the licence]. John Gore subsequently prevented Ms Hyde from formally interviewing his father, saying that he needed to seek legal advice. Ms Hyde was never able formally to interview Peter Gore.
6. Mr Williams's further inquiries established that the registered keeper of MX03 MZD was John Gore.

Public inquiry

Call to public inquiry

7. I was extremely concerned by these reports and decided to call the operator to a public inquiry. The call-up letter, sent on 29 January 2018, cited Sections 26(1)(b), (c)(iii), (e), (f) and (h) and 28 of the 1995 Act.

Holding of public inquiry

8. The inquiry was held in Birmingham on 28 February 2018. Present were VE Williams and TE Hyde from DVSA. The operator was represented by barrister Paul Ozin QC. Neither Peter Gore nor John Gore was present. Mr Ozin's explanation for their absence, sent in an email earlier that day to my clerk, was that Peter Gore was in his 90s and too frail to attend. John Gore was a working farmer and was particularly busy this week with the lambing season, snow and cold weather. No discourtesy was intended by their absence.

Audit

9. Immediately prior to the inquiry beginning, Mr Ozin gave me a copy of an audit which had been carried out by Transport Management Services in November 2017. The audit noted that most systems were poor and noted that no maintenance or drivers' hours records could be produced. The auditor was told that they had been "accidentally disposed of". It was clear from the audit that the auditor had dealt only with John Gore, described as the "owner/driver at J Gore Farming" and never Peter Gore. The auditor appeared to be unaware of the 4 August collision and the serious breaches of the law which that had revealed.

DVSA evidence

10. VE Williams stated that he had found some 10 to 20 M6 Toll tickets in the cab of the vehicle on 4 August 2017. He did not know the exact number, as they had been retained by the police. John Gore was due in court on 7 March 2018, facing prosecution for careless driving and driving a vehicle without a test certificate or insurance. The vehicle into the back of which John Gore had driven on 4 August 2017 had been propelled onto the verge and tipped on its side. If there had been anyone in the back seats the likelihood was that they would have been seriously injured or worse.
11. TE Hyde stated that, when she had met Peter Gore, he had stated to her that he had stopped operating 20 years ago.
12. For the operator, Mr Ozin accepted that Peter Gore had not exercised adequate control of the licence. The deficiency had not been filled by John Gore. Since the collision in August 2017, however, there had been some restructuring. A transport manager could be brought in and John Gore's daughter had joined the business. Peter Gore was not in a state to manage the licence any more. The business's haulage needs were currently being carried out by third party haulage companies: the intention was to surrender the existing licence and apply for a new one.

Findings

13. After considering all the evidence, I make the following findings:
 - i) there has been a material change in the licence (Section 26(1)(h) of the 1995 Act refers) in that the nominal holder Peter Gore has had no involvement with the operation of the vehicle or the management of the licence for many years. The actual operator is his son John Spencer Gore;
 - ii) the operator's vehicle has been subject to a prohibition on 4 August 2017 for multiple and serious defects (Section 26(1)(c) (iii) refers);
 - iii) the operator has not fulfilled its promise made on application to give vehicles safety inspections every six weeks (Section 26(1)(e) refers). There is no evidence that any inspections have ever been made;
 - iv) the operator has failed to fulfil its undertakings to keep vehicles fit and serviceable, to keep maintenance records for 15 months, to ensure the observance of drivers' hours and tachograph rules and to ensure the lawful operation of vehicles (Section 26(1)(f) refers);
 - v) the operator is not fit to hold a licence (Sections 13B and 26(1)(h) refer). Peter Gore has abdicated his duty over an extended period of time, allowing his son John to operate in an entirely illegal manner showing a breathtaking disregard for the safety of other road users. John Gore knowingly and repeatedly took out on to the public road a vehicle which had not had an MOT for five years, had not been given any safety inspections, was visibly and seriously unroadworthy,

was using illegal fuel (red diesel) and was untaxed. There is no evidence that he ever used tachograph charts, still less analysed them for drivers' hours offences. He did all this under the umbrella of his father's licence, putting his father in an invidious position. I deplore John Gore's conduct in the strongest possible terms.

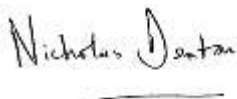
Conclusions

Revocation

14. As the licence is no longer being operated by the entity to which it was issued (sole trader Peter Gore), it must be revoked under Section 26(1)(h). I am also revoking it under Section 26(1)(c)(iii), (e) and (f) owing to the extreme disregard for the law and road safety which the actual operator of the licence, John Gore, has shown.

Disqualification

15. I have considered whether to disqualify Peter Gore under Section 28 of the 1995 Act from holding a licence in the future. I have concluded that such a disqualification would be entirely merited, as his signing of the continuation forms and cheques over the years confirmed that he remained the operator when this was simply untrue. His actions have given the cover for his son to operate the HGV in the most reprehensible way. However, because Peter Gore is over 90 and may not have realised the full repercussions of his actions or lack of them, and because there is in practice no prospect of him ever holding a licence again, I have refrained from imposing a disqualification order upon him.
16. Although John Gore is not the nominal licence holder, in reality he has been the operator. The specified vehicle is registered to him; he drives it and decides what work it does. He is the controlling mind of J Gore Farming, which has a website advertising the fact that "General haulage is also undertaken" (the licence is a restricted one). He is the *de facto* operator. Because of the very serious findings outlined above (particularly in paragraph 13 (v)), I conclude that John Gore deserves to be disqualified under Section 28 from holding a licence in the future. In deciding upon the length of his disqualification, I have taken account of paragraph 93 of the Senior Traffic Commissioner's Statutory Guidance Document 10. This posits a starting point of between one and three years for a first public inquiry (which this is) but a period of between five and ten years or even indefinitely in certain cases where an operator has deliberately put life at risk and/or has knowingly operated unsafe vehicles. John Gore clearly has knowingly and repeatedly operated an unsafe vehicle and has also knowingly operated it using illegal, rebated, fuel and without paying vehicle excise duty. I have determined on a disqualification period of eight years as being proportionate to the seriousness of his offences and in line with the STC's guidance.



Nicholas Denton
Traffic Commissioner
1 March 2018