



**IN THE WELSH TRAFFIC AREA**

**PUBLIC INQUIRY**

**GWYNEDD ENVIRONMENTAL SERVICES LIMITED**

**OG1013809**

**TRANSPORT MANAGER: DAFYDD PRICE THOMAS**

**Goods Vehicles (Licensing of Operators) Act 1995 (“the Act”)**

**BEFORE**

**ANTHONY SECULER  
DEPUTY TRAFFIC COMMISSIONER**

**HEARD AT THE WELSHPOOL JUSTICE CENTRE**

**ON**

**23<sup>RD</sup> MAY 2018**

**Decision**

1. Grounds for action against the licence, as set out in the call-up letter and summarised below in paragraph 6, are made out. The repute of the operator company is “severely tarnished” but retained.
2. The good repute and professional competence of Dafydd Price Thomas as a Transport Manager is lost under Paragraph 16(2) of Schedule 3 of the Act and he is disqualified from acting as a Transport Manager indefinitely.
3. The professional competence of the operator company is lost pending the appointment of Lisa Owen, or another suitable, qualified individual, as Transport

Manager. A period of grace until 30<sup>th</sup> June 2018 is allowed for the application to be made and processed.

4. I reflect the severity of the operator company's misconduct, taking into account the considerations set out in the decision, in a curtailment of the fleet to 10 vehicles for a period of 3 months, commencing on 17<sup>th</sup> June 2018.

5. An undertaking is added to the licence to obtain a full independent audit of maintenance and traffic compliance systems, including tachographs and drivers' hours, by 30<sup>th</sup> September 2018 and annually thereafter. Copies of the audit reports are to be made available to DVSA and OTC within 14 days of receipt.

## **Background**

1. Gwynedd Environmental Services Limited ("the operator company"), is the holder of a Standard National Operator's Licence granted on 7<sup>th</sup> March 2003 and authorising 25 vehicles and 25 trailers.
2. The directors of the operator company are Dafydd Price Thomas, who is also the designated Transport Manager, and his wife, Elizabeth Rayner Thomas.
3. On 23<sup>rd</sup> August 2017 an "S" marked prohibition (indicating a significant failure in the maintenance system) was issued against one of the company's vehicles for having an AdBlue emulator, an emissions cheat device, fitted.
4. An unannounced visit to the operator company was made by DVSA Vehicle Examiner, Phillip Bramham, ("VE Bramham") on 13<sup>th</sup> November 2017. Some 82 days after the initial prohibition he found that there were approximately 20 vehicles still operating with AdBlue cheat devices.
5. The company's response to the DVSA's formal request for an explanation stated that the emulators were fitted to overcome technical difficulties with the emissions warning systems in some vehicles. It denied any intent to deceive and stated that the cost of fitting the emulators was greater than any savings made. The non-removal of the devices after the initial stop was an admitted failing.
6. The operator company was called to Public Inquiry by a letter dated 14<sup>th</sup> March 2018, citing breach of licence conditions (section 26(1)(b) of the Act); prohibitions

(section 26(1)(c)(iii)) and possible loss of good repute, professional competence and financial standing (section 27(1)(a)).

7. The Transport Manager was called under section 27(1)(b) and Schedule 3 of the Act on the ground that he may not be exercising continuous and effective management of the transport activities and may not continue to meet the requirement to be of good repute and professionally competent.
8. The operator company has had one previous appearance at a Public Inquiry on 21<sup>st</sup> September 2016 when a short curtailment of the fleet from 25 to 22 vehicles for one month was ordered in respect of prohibitions and maintenance shortcomings.

### **The Public Inquiry**

9. The Inquiry was originally listed to be heard on 19<sup>th</sup> April 2018. At the request of the operator company the hearing was adjourned to 23<sup>rd</sup> May. The Traffic Commissioner issued Directions to the operator company requesting within 21 days, “written evidence confirming where and when the emissions devices were installed, including the paperwork showing the costs. Additionally he directs that maintenance records showing the devices being installed be produced.” Copies were ordered to be sent to VE Bramham.
10. Representatives of the operator company sent copies of a schedule of invoice summaries showing “AdBlue Module”, “AdBlue Box”, “VR Module”, “AdBlue Repair Kit” and “AdBlue Fault”. However, there was no clear schedule or invoices linking the emissions emulators to 20 plus specific vehicles fitted in the devices and this remained the case at the Public Inquiry. Neither were maintenance records produced as directed clearly showing the devices being installed.
11. At the Public Inquiry, the operator company attended through the two directors and Transport Manager, represented by Mr Aled Owen, Solicitor, of Harrison Clark Rickerbys, Solicitors. Also in attendance as witnesses for the operator company were Gwylm Thomas, newly appointed Director, Lisa Owen, prospective new Transport Manager and Gareth Thomas, Maintenance Manager at the time of the investigation.

12. DVSA were represented by VE Phillip Bramham accompanied by his Senior Vehicle Examiner.

### **Evidence**

13. The statement of VE Bramham was accepted in its entirety and is merely summarised for the purposes of this decision. His evidence is important in outlining the wider context of the emulator devices as well as the particular facts in this case.
14. Essentially, in order to comply with EU Emissions Standards the AdBlue Diesel Exhaust Fluid is added at the rate of 4%-7% of diesel used via a separate small tank to the exhaust gas. The fluid combines with the gas to convert nitrogen oxides, which are harmful to the environment and public health, into harmless nitrogen and water.
15. The emulators or AdBlue cheat devices circumvent the essential warning systems that tell the driver/operator if the system requires maintenance, develops a fault or if the emission levels become unacceptable. They also undermine the whole purpose of the vehicle emissions legislation determined upon by the EU Council of Ministers.
16. The extent of the AdBlue manipulation devices in this fleet led VE Bramham to conclude that the decision to follow this illegal practice was a corporate one and not the actions of one individual person. He refers to the management team and the maintenance manager being aware of the prohibition in August 2017 yet doing nothing to remove the remaining devices before the follow up investigation.
17. VE Bramham refers to the savings made by the operator in not having to purchase the AdBlue but also in reducing downtime for the operator where modern emission management systems can put the engine into "limp mode" (an admitted problem suffered by the operator prior to the devices being installed) or prevent the engine from starting if the emissions control systems are not maintained or working correctly.

18. VE Bramham concludes that the operator has gained an unfair commercial advantage over other compliant operators. Their large fleet of vehicles “would certainly not meet exhaust emission requirements for the engine/emission approval and they have had a detrimental effect on exhaust engine pollutants, particularly oxides of nitrogen”.
19. VE Bramham assessment of the operator against all other aspects of the formal Maintenance Assessment is marked as “Satisfactory”.
20. **Evidence on behalf of the Operator/Transport Manager** was presented in a file of statements and documents which I received and considered on the day of the Inquiry. The witnesses were asked to confirm the honesty of their statements and I highlight the following key parts:
21. **Dafydd Price Thomas** outlined the history of the family business and recounted his pride in the contribution of the company to employment, environment and business in their community.
22. Regarding the emulators being fitted, he admits to a conversation with Gareth Thomas, maintenance manager, about the vehicles going into “limp mode” and the potential use of a device to stop that. He states that he enquired whether the device was legal or not and relied on confirmation that it was from Gareth who, himself relied on the electrician consultant, Dewi Richie, of Car2Commercial. The Director failed to take any independent advice or to raise any essential questions and he accepts that he failed to carry out his duties as a Director and Transport Manager in a proper manner in allowing the devices to be fitted.
23. In submissions on behalf of the operator it is accepted that Mr Dafydd Thomas must lose his reputation as a Transport Manager. He has agreed to stand down as a Director and his brother, Gwilym Thomas, and three others have been put forward to replace him.
24. **Elizabeth Thomas** confirmed the evidence in her statement. Her role in the transport management was largely financial and her response was one of anger on hearing of the cheating devices as environmental compliance was a priority for her and the company. She had determined to retire as a director and a new management team had been appointed to take the business forward.

25. **Gwilym Thomas** confirmed the evidence in his statement. He had been appointed as a new director of the operator company and his special responsibility was regulatory compliance and direction in terms of corporate responsibility. He was a retired police officer with over 39 years' experience in North Wales Police force.
26. His statement outlined the changes that were planned within the business and his commitment to making the operator compliant in every aspect.
27. **Gareth Thomas** confirmed his previous responsibilities as maintenance manager and stated that he took pride in the operator company's achievements in terms of maintenance systems which had been satisfactorily checked by DVSA/VOSA.
28. He discussed the installation of the "boxes" with Dewi Richie as a means of dealing with the problem of emissions system repairs. He took his advice from Dewi, "some local hauliers" and an advert on the internet.
29. He states that he did not realise the nature of the problem when the vehicle was stopped on the 23<sup>rd</sup> August 2017 despite the driver reporting to him that he had told DVSA that AdBlue had not been put in the vehicle, that the box was illegal and that it needed to be removed immediately after the current load was tipped.
30. He purports to correct an error in the DVSA paperwork by saying the GV9 was not "S" marked but was "D", delayed. He accepted on questioning that he was wrong. The prohibition was both "S" marked and delayed as the risk to road safety was not immediate.
31. He admits to "naivety" in not being better informed and in not removing the devices from the remaining vehicles immediately after the first prohibition in August. He states that despite being angry with Dewi over the fitting of the devices, he was the person he turned to in order to remove the boxes. He stated that "the conversation regarding legality or illegality never came up" notwithstanding the assurances Gareth Thomas gave his uncle that the boxes were legal.
32. **Lisa Owen** gave evidence as the prospective new Transport Manager. She had worked for the operator company for 18 months and had assisted the Transport

Manager with some of his regulatory obligations. She had passed the CPC for Transport Managers in January 2018.

33. She confirmed that Gareth Thomas dealt with the August prohibition and when the investigation developed she had considered walking away from the operator company. She candidly states, “I cannot understand why this issue was not known. It should have been done better. I was there in a secondary capacity but there was enough information to detail what should and should not have been done.”
34. Lisa Owen confirmed to me that she is content to work within the new corporate structure and she recognised that she was attaching her newly acquired professional competence and repute to the operator company and its people. Since the investigation there had been 3 clear audits, including one from FTA, and she regarded the company as “90% a great company”.

### **Findings of Fact**

35. I am asked to find that the fitting of the AdBlue emulators in this case over 3 years ago was done in innocence relying on an outside technician. I am also asked to find that the considerably more recent failure to remove the cheat devices despite an “S” marked prohibition for having a device fitted was down to naivety and a lack of appreciation of the seriousness of the issues.
36. I refer to the wider context of the emulator devices and AdBlue as stated in VE Bramham’s statement. The issue has been extensively covered and discussed in the trade/national press, on the internet and on national television over a number of years. The availability and use of the AdBlue cheat devices cannot have escaped the attention of anyone connected with the haulage industry. This is particularly the case for operators, transport managers and professional drivers. Turning to this operator, this is a not unsubstantial business offering a specialist environmental/transport service. The very name of the company, Gwynedd Environmental Services Ltd, demonstrates that environmental issues must be at

the core of their existence so to suggest that ignorance and naivety are at the root of their failings in this case defies common sense and reasonable belief.

37. Regarding the evidence of Dafydd Thomas, as Director and Transport Manager I find that, at best, the extent of his enquiries when his maintenance manager discussed the fitting of the emulators to avoid the vehicles going into limp mode was wholly inadequate. From his own statement, to simply ask whether this device was legal or not and to then rely on the second-hand advice of the consultant who was selling the devices was negligent in the extreme. I find that the documentary evidence supporting the purchase of the devices was wholly inadequate. The Director stated that the invoices are somewhat obtuse. They certainly fail to support an open, transparent purchase of equipment that was believed to be lawful. A number of the invoices refer to "VR Module", "NOx sensor", and "AdBlue fault" which may well be the costs associated with maintaining a properly functioning emissions system which the devices avoided.
38. I find that his evidence regarding the "S" marked prohibition was similarly unbelievable. He states that he accepted the assurance from Gareth that the prohibition was a "one-off" and a minor matter. As Transport Manager, he was under a professional duty to make proper enquiries, to inform the Traffic Commissioner and to consider the implications for the rest of the fleet which he knew had had the devices fitted. One glance at the "S" marked prohibition should have raised the alarm bells particularly from an experienced manager who had supposedly queried the legality of the devices three years before. Of course, by 2017, the degree of trade and public awareness of the AdBlue cheating issue was considerably greater. He says in his statement, "I did not think about the issue of adblue". I find that he should have done and in fact, from his response to my questioning at the Inquiry, I am convinced that the state of his knowledge was far greater than that admitted in his statement and he conceded that assertions made about other operators in his statement were wrong.
39. I find that the cheating devices could not have been installed in the 20 plus vehicles for a period of over 3 years without the connivance or acquiescence of the body of 25 plus drivers employed by the operator. None of the witnesses



appearing before me on behalf of the operator admitted to giving instructions to the drivers regarding the removal of the need to add AdBlue when re-filling or how queries were not raised in their defect reports or elsewhere about the AdBlue gauge or emissions warnings not functioning as intended. Yet professional drivers, whose ears are normally close to the ground on live trade issues, would have had to receive some instruction from their manager(s) to perpetuate the use of the cheating devices fitted to their vehicles over the period concerned.

40. I find that the operator's response to the disciplining of Gareth Thomas, the maintenance manager, is not indicative of a company that has been misled by a junior employee into committing serious regulatory breaches. The statements say that he offered his resignation but was "demoted" to "a minor admin position". On questioning, it transpired that the demotion involved no loss of emoluments, just a role change from maintenance management to the administrative side, which even allowing for family loyalties, sends entirely the wrong message to the staff as a whole.
41. The director/operator company concentrate on the minimal savings on AdBlue costs but the substantial savings, as stated by VE Bramham, were in the downtime and costs of maintaining a properly functioning emissions system operating to current EU standards.
42. I found the evidence of Gareth Thomas on the fitting of the cheat devices entirely unsatisfactory. On his own evidence, the extent of his enquiries (the seller, some unnamed local hauliers and an advert on the internet) was appallingly lax and I do not believe that as a maintenance manager with over 8 years' experience in the business he would have accepted that "the emissions was (sic) within the tolerance allowed" without any independent verification.
43. I found his evidence about not appreciating the seriousness of the DVSA stop on the 23<sup>rd</sup> August 2017 similarly unconvincing. Surely information that a vehicle had been stopped for having the emissions device fitted and it had to be removed straight after its current load was tipped would have triggered alarm. Also the reported conversation confirms my findings with regard to the drivers as

it was the driver admitting that he had not put AdBlue in the vehicle which prompted the further DVSA investigation.

44. I am asked on behalf of the operator to find that the failure to remove the remaining boxes after the August prohibition is evidence of the operator's naivety and shows the absence of a corporate decision with full knowledge of the regulatory obligation. However, the extent of trade and public awareness of the AdBlue issue by November 2017 makes it more plausible that the operator was aware of the seriousness but, having dealt with the August prohibition, they believed that they could continue to operate without detection as they had for the previous 3 years. In any event, the failure to remove the cheat devices is conclusive evidence of the poor management of transport compliance issues within the operator company.

### **Considerations**

45. The operator company has engaged in cheating of environmental regulations over a 3 year period. That cheating continued in approximately 20 vehicles from an authorised fleet of 25, for 82 days after the detection of the first emulator device. The operator company's actions risk harm to the environment and public health, including life expectancy in the long term. The effect on fair competition is not just reflected in the financial savings in purchasing AdBlue, which it is submitted by the operator's representative is insignificant in this case. It is also reflected in the savings in maintaining a properly functioning vehicle emissions warning system and remedying any faults in levels of pollutants being emitted. Environmental cheating on this scale fundamentally undermines public confidence in the road haulage industry as well.

46. It is well established that trust between operators and traffic commissioners is an essential element of the operator licensing regime. Where cheating on the scale engaged in by this operator is committed, that trust is heavily undermined and the good repute of the operator is placed in jeopardy.

47. This is a case where two fundamental principles of decision-making in this jurisdiction are vital. Firstly, traffic commissioners have to weigh in the balance the positives as well as the seriousness of the breaches when assessing any regulatory action. Secondly, in assessing the repute, professional competence and likelihood of future compliance, the situation as at the date of the public inquiry needs to be assessed.
48. With regard to the positives, I note that the Maintenance Investigation Report from VE Bramham is entirely satisfactory apart from the emissions prohibition and devices. The prohibition history is not bad and the MOT history is good with a failure rate below the National average at 11% over the last 5 years. There has been one previous public inquiry since the licence was granted in 2003 which resulted in relatively minor regulatory action. The operator and staff were co-operative and open during the investigation.
49. Audit reports have been produced which show a generally positive picture of compliance on maintenance and traffic, including drivers' hours. Company policies have been reviewed and revised and new Key Performance Indicators to cover all layers of compliance are under development.
50. I note the positive action taken by the operator company in making a £10,000 voluntary donation to North Wales Wildlife Trust, although as I reflected at the Public Inquiry, the savings in AdBlue represent only a small part of the potential costs in running a properly functioning vehicle emissions system.
51. The fact that AdBlue emulators obviate the need to replenish AdBlue fluid at the same rate, interfere with emissions warning systems and override AdBlue gauges, undermines the positive evidence that vehicles are maintained in a fit and serviceable condition. It also undermines the quality of the apparently satisfactory vehicle inspection regime where "electrical equipment and wiring" is one of the specified checks. Further it raises doubts about the efficiency of the driver defect reporting system if drivers are not reporting issues regarding AdBlue and warning gauges/indicators.
52. A culture of compliance in a company has to be across the board and drivers/ technicians who would have known of cheat devices being used in their vehicles

for over 3 years cannot be relied on to respect the rules in every other regard. This is evidenced by the warnings issued to drivers for using hand-held mobile phones in the operator's file, which no professional driver should do.

53. Regarding the situation as at the date of the Public Inquiry, the operator has undertaken a root and branch overhaul of its corporate management structure and personnel.
54. It is accepted by the operator that Dafydd Price Thomas has lost his good reputation as a Transport Manager and Lisa Owen has been put forward as an alternative Transport Manager. Dafydd Price Thomas and Elizabeth Thomas have agreed to stand down as Directors and Gwilym Thomas and three others are to be new Directors with Gwilym Thomas taking a lead role as far as regulatory compliance is concerned.
55. I had the opportunity to hear from and assess Gwilym Thomas and Lisa Owen as office holders. Gwilym Thomas is a retired police officer who served with North Wales Police for over 39 years. Lisa Owen is a recently qualified CPC holder with experience in the transport industry as a depot manager. Lisa Owen admitted that when she found out about the AdBlue cheating she considered walking away from the company but she is satisfied that the company are genuinely committed to change and to getting it right in the future. Both Lisa Owen and Gwilym Thomas impressed as responsible and reasonable individuals who would be positive influences on the operator company and the industry generally.

### **Decision and Reasons**

56. In assessing the conduct of the operator against the "Suggested Starting Points for Consideration of Regulatory Action" in Annex 3 of the Senior Traffic Commissioner's Statutory Document No. 10, the use of cheating devices which; compromise public health, give the operator a commercial advantage over other operators maintaining correctly functioning emissions warning systems, and, requires drivers to collude in operating compromised systems, must come into

the “severe” regulatory starting point. I place the conduct slightly below using a fraudulent device to interfere with tachograph readings as the risk to public health is less immediate and direct. I also take into consideration the fact that cheating of tachographs is specified as a “most serious infringement” in Regulation (EC) 1071/2009. Nevertheless, revocation or extended suspension must be considered on the facts of this case.

57. Turning to the important preliminary question set out by the Upper Tribunal in the case of *Priority Freight Ltd & Paul Williams (2009/225)*; “How likely is it that this operator will, in future, operate in compliance with the operator’s licensing regime?”, the changes made in the management structure, personnel and operating policies enable me to answer this question in the positive as “likely”. That conclusion having been reached, I answer the *Bryan Haulage (No. 2)* question; “is the conduct such that the operator ought to be put out of business?” in the negative.
58. Grounds for action against the licence, as set out in the call-up letter and summarised above in paragraph 6, are made out. The repute of the operator company is “severely tarnished” but retained.
59. The good repute and professional competence of Dafydd Price Thomas as a Transport Manager is lost under Paragraph 16(2) of Schedule 3 of the Act and he is disqualified from acting as a Transport Manager indefinitely.
60. The professional competence of the operator company is lost pending the appointment of Lisa Owen or another suitable, qualified individual as Transport Manager. A period of grace until 30th June 2018 is allowed for the application to be made and processed.
61. I canvassed with the operator’s representative the potential impact of a 28 day suspension of the operator’s licence. I was informed that having regard to the specialised nature of the work and the geographical area of operation, the impact would be highly damaging to the operator and the community. I was informed that a partial suspension/curtailment to 10-12 vehicles would cause difficulty but would be sustainable.

62. I reflect the severity of the operator company's misconduct, taking into account the considerations set out above, in a curtailment of the fleet to 10 vehicles for a period of 3 months commencing on 17<sup>th</sup> June 2018. Detailed records of the vehicles operated and parked-up, with odometer readings and tachograph verification are to be kept and made available to DVSA upon request.
63. This curtailment will undoubtedly have an adverse impact on the operator company's profitability but the operator may reflect on the reasons for the action and consider the expectations of legitimate, compliant operators and the public at large where sustained, systemic cheating has occurred. I take into consideration the Upper Tribunal decision of Dundee Plant Company Ltd (2013/47) referring to the need for tough regulatory action to reflect "the public interest in maintaining the integrity of the system".
64. An undertaking is added to the licence to obtain a full independent audit of maintenance and traffic compliance systems, including tachographs and drivers' hours, by 30<sup>th</sup> September 2018 and annually thereafter. Copies of the audit reports are to be made available to DVSA and OTC within 14 days of receipt.

Anthony Seculer  
Deputy Traffic Commissioner,  
Welsh Traffic Area.

30<sup>th</sup> May 2018