



SOUTH EASTERN AND METROPOLITAN TRAFFIC AREA

DECISION OF THE DEPUTY TRAFFIC COMMISSIONER

PUBLIC INQUIRY HEARD AT IVY HOUSE, IVY TERRACE, EASTBOURNE ON

27 JUNE 2018

OK1137236 FULLER GRAB HIRE LIMITED

OK1146620 SMALLFIELD RECYCLING LIMITED

Decision

Breach of Section 26(1) (c) (f) and (h) of the Goods Vehicles (Licensing of Operators) Act 1995 found

Number of vehicles authorised to Fuller Group Hire Limited curtailed to five for a period of 21 consecutive days to be served by the 30 September 2018.

Suspension of the licence applicable to Smallfield Recycling Limited ordered for 21 consecutive days – this suspension to be served at the same time as the curtailment ordered in relation to Fuller Grab Hire Limited.

The net effect of these orders is that the operators will be limited to operating 5 vehicle only for 21 consecutive days. Details of the vehicles to be curtailed and the dates for the curtailment and suspension to be sent to the Office of the Traffic Commissioner within 7 days of receipt of this decision

Undertakings

- a) Proof of financial standing for Smallfield Recycling Limited for the period July to September 2018 to be sent to the Office of the Traffic Commissioner by the 31 October 2018**
- b) An independent audit of the operator's systems for both licences for maintenance and drivers hours and the effectiveness with which those systems are implemented will be carried out by the RHA, FTA or other suitable independent body, to be undertaken no less than 5 months and no more than 7 months from the date of the public inquiry. The audit should cover at least the applicable elements in the attached annex. A copy of the audit report, together with the operator's detailed proposals for implementing the report's recommendations, must be sent to the traffic area office in Eastbourne within 14 days of the date the operator receives it from the auditor**

Repute of former Transport Manager Nicola Daw retained but tarnished

Repute of former Transport Manager Ormonde Parkes retained but severely tarnished. Advised to undertake refresher training.

Appointment of Sally Blake as new Transport Manager approved

Additional operating centre at Hurstridge, Hathersham Lane, Smallfield, Horley, Surrey RH6 9JG for 10 vehicles approved.

Background

1. The operator Fuller Grab Hire Limited is the holder of a standard national licence granted on the 7 May 2015 authorising ten vehicles with ten vehicles currently in possession. The operator Smallfield Recycling Limited is the holder of restricted licence granted on the 28 August 2016 authorising five vehicles with five in possession. The sole director of both companies is Matthew Paul Fuller and the transport manager at the stage of call up was Ormonde Russell Parkes. The previous transport manager was Nicola Ann Daw.
2. On the 3 January 2018 an investigation was undertaken by Traffic Examiner Morris and as part of the investigation a request was made for copies of tachograph records for the period between 1 September 2017 and 30 November 2017. Not all records were produced within the specified timeframe and when they were they showed various infringements including a significant amount of driving taking place without drivers' cards being in the tachograph unit head. It appeared that cards were being removed to disguise driver's hours' offences. An additional issue identified was the fact that the records incorporated data for both companies into one and no distinction was made between which drivers were working for the different companies. All vehicles for both companies carried the same livery – "M Fuller."
3. Subsequent enquiries by Traffic Examiner Morris revealed that some data was still missing as a result of an I.T. fault but what was provided showed failings in systems and compliance as detailed in her subsequent report, plus a total of 39 occasions across the two companies when driving had taken place without the required cards in the tachograph head. Offences were apparent for 11 drivers and 5 were called to a driver conduct hearing as a consequence (see separate note for the results of these hearings)
4. A maintenance investigation was conducted on the 5 March 2018 which was marked an unsatisfactory. A report prepared by Vehicle Examiner Hynes was included in the documents prepared for the public inquiry.
5. Nicola Ann Daw was nominated as transport manager from the 5 June 2017 to the 10 November 2017. Ormonde Russell Parkes was nominated from the 10 January 2018 and it transpired that he had been removed as transport manager on the 1 June 2018. An application to be considered as a new transport manager had subsequently been lodged by Sally Blake.

Call Up Notice

6. Call up notices were issued on the 22 May 2018 and confirmed to the operator that the issues for consideration were those identified by Traffic Examiner Morris and Vehicle Examiner Hynes. Notices were also served on Ms Daw and Mr Parkes as transport managers. Drivers Roger Welsh, Darren Green, Mark Apps, David Fox and Robert Ridout were called to a conjoined driver conduct hearing.

The Public Inquiry

7. The sole director of both companies Matthew Fuller attended the inquiry and was represented by Paul Carless Jnr. Paul Carless Snr represented three of the drivers and Mr Parkes who also attended. Mrs Daw attended and was represented by counsel Mr Restell.
8. Traffic Examiner Morris gave evidence and confirmed the contents of her statement. She explained that she had dealt with transport consultant Chris Shelford during her investigation and he had been the person who sent her the information she requested albeit late. The operator had been given a chance to explain why there was evidence of driving without tachograph cards being used and in response she had been sent a schedule from Mr Shelford which included a variety of reasons given. On a number of occasions it was claimed that "emergency work" was being undertaken. Ms Morris explained the parameters for this exclusion and said that once any emergency work had concluded drivers are required to resume normal working in accordance with regulations and to take any breaks etc. In the current instance even if the criteria for emergencies had been met the drivers were not complying once they returned to normal duties. An explanation given for other occasions was a defective tachograph head or driver card. Ms Morris said that in those circumstances manual records should be kept and she had not been provided with these.
9. In cross examination she emphasised her concerns as to the "blurring of operation" between the two companies. She accepted that on at least one and possibly two occasions emergency work had been undertaken but repeated the point that the drivers had contravened the regulations once they then returned to normal working. She had seen compliance reports for the last three months and whilst these appeared to be much better than previously there were still some issues and an overlap between the operation of the two licences. She believed that the faults of the drivers in the past had been a result of ignorance of what was required, a lack of guidance and not knowing who they should go to for advice. In answer to Mr Restell she said that Mrs Daw was not mentioned to her at any time and she believed that a Mr Briggs was responsible for scheduling work and journeys.
10. I then dealt with the five drivers and the result of those hearings are noted separately. In summary they said that some and in other cases all occasions when cards were not used was a result of them undertaking what they believed to be emergency work. There appears to have been a belief amongst the drivers that this was the correct thing to do and one driver thought a previous transport manager had advised him to do this. In most instances further offences were a result of not using a card and then resuming normal duties without taking the breaks as required. Some drivers recalled speaking to Mrs Daw but none referred specifically to Mr Parkes believing transport consultant Mr Shelford to be the manager.
11. Mrs Daw submitted a statement and comments on the evidence in advance of the inquiry and the contents were confirmed by her. Her statement outlined the difficulties she had in her relationship with Mr Fuller. She said that she had introduced herself to drivers when she first started in her role and had given them copies of infringements reports. She had never been spoken to or asked to give guidance on the emergency or utility work issue and was not aware of the drivers' practice in this regard. She had been expected to combine her transport duties with her work as an administrative assistant and 10 hours was assigned for the transport side. She never allocated work to the drivers and had no authority to

take action or discipline drivers. She had been aware of the missing mileage and produced printouts to the inquiry detailing this. She had raised this with Mr Fuller but had not given him copies of the printouts. She had not raised the blurring of operations between the two companies and had no reason to ask where the wages for drivers were coming from.

12. Mr Parkes said that he had been transport manager from 10 January and had met Mr Shelford in February. Mr Shelford had attended the interviews held by the DVLA and generally liaised over the issues found. He said that had gone to the operating centre in the evenings and kept in touch with Mr Fuller. He had been asked to take on the transport manager role on a temporary basis as Josh Fuller was studying for his CPC examination and the arrangement went on longer than anticipated. He accepted that he had delegated his responsibilities to others but believed things were in order. He is a transport manager on two other licences one of which has been in place since 2013.
13. Matthew Fuller said that he had been a driver for other companies before starting the current businesses. Smallfield Recycling Limited had initially been run with his father who now has a separate business. The vehicles authorised across the two licences number 15 and are run to capacity. Some utility and emergency work had been undertaken by the companies and evidence of some instances was produced. None of the transport managers had raised the issue of the two companies working too closely together. He did not recall Ms Daw mentioning missing mileage. He accepted that he did shout sometimes at the drivers but denied “smashing up the office” as alleged. He did not see the infringement reports in the past but a new analysis tool had been purchased now which is simpler and more accessible. He accepted that Mrs Daw had not misled him over emergency work – this had been Mr Connor. Domestic logs were available for use when cards were not but no examples were available to produce. An audit had been undertaken recently and this had been the first time he had realised the issues around the two companies running together – changes were in progress to regularise the situation. Training had been arranged and/or attended by a variety of people, a new computer system had been purchased to help with scheduling and Ms Blake was applying to be a new transport manager. An application had also been made for a new operating centre – the existing site had to be vacated for a time due to a flood.
He accepted that in 2017 the businesses had been in a state of chaos, there had not been managers in place and growth had occurred too quickly. He had been solely responsible for decision making up until November but he did not accept that he had been overbearing. He denied that Mrs Daw had a conversation with him about leaving and threatening her as a consequence. During that time he had been regularly taking his nephew to hospital for treatment.
14. Mr Russell presented an audit for my consideration and gave his opinions in relation to what should have been changed at an earlier time as regards the separation of the two businesses.
15. Ms Blake handed in a folder setting out her background and qualifications and explained how she would undertake her role as transport manager if approved.

Findings and Decision

a) Links between Fuller Grab Hire Ltd and Smallfield Recycling Ltd

16. Auditor Mr Russell was particularly strident in his view that the previous transport managers and transport consultant Shelford should have been alert to the issues here and advised accordingly. My finding is that all were equally culpable including Mr Fuller who is presumed to know what is required to operate lawfully. However I do not attach a high level of seriousness to this aspect of the case. Whilst arrangements were muddled the consequences did not impact on public safety and the changes now made and proposed create a clear distinction between the licences and regularise matters.

b) Other regulatory failings

17. Mr Fuller accepted during his evidence that the businesses were in a “state of chaos” in 2017. He also said that “he made all the decisions” whilst at that time he was distracted because he was taking his nephew to hospital for regular treatment. He accepted that he shouted at drivers – swearing was not specifically mentioned but may be implied. I have concluded that he did act in an intimidating manner towards Mrs Daw and I anticipate towards others. His manner when cross examined by Mr Restell displayed a level of aggression at times and both Mrs Daw and one of the former drivers asked to give evidence without being directly in his eye line. I granted those requests believing them to be genuine.
18. With this conclusion in mind I have to decide whether it is more likely than not that Mr Fuller knew about the level of non-compliance and removal of drivers’ cards and if so whether he encouraged such actions or “turned a blind eye” to it. Mrs Daw says that she mentioned the missing mileage reports to him but she also accepts that she did not specifically alert him to the extent or provide him with the relevant reports. Some of the instances discovered by Traffic Examiner Morris have been shown to be occasions when genuine emergency work was being undertaken and a combination of ignorance of the regulations and a lack of instruction/guidance to drivers coupled with inadequate disciplinary procedures led to what happened. I also believe that some drivers found this uncertainty a convenient way of working and driving for longer than they should have knowing that within the regime that was in place little or nothing would be done as a consequence. My finding is therefore that Mr Fuller as sole director has a significant degree of culpability for these serious failings but that this falls at a level below deliberately and knowingly promoting non-compliance. I am satisfied that Mrs Daw voiced her concerns to him but as a result of the combination of the force of his personality and her lack of assertiveness in doing so I find that it is more likely than not that he did not fully appreciate the level of seriousness of the situation.
19. In terms of my formal findings I find that there have been breaches of Section 26(1) (c) (f) and (h) of the Goods Vehicles (Licensing of Operators) Act 1995. In deciding what action to take I need to balance the positive aspects of the evidence with the negative. On the maintenance side whilst the report from Vehicle Examiner Hynes was unsatisfactory the failings were of the less serious kind and have been remedied. At the inquiry I was presented with a plethora of evidence showing what the operator has done to change and achieve compliance. Training has been and will be arranged, a mostly positive audit has been undertaken, new systems and managers are in place and Mr Fuller said that he no longer takes on “emergency work” with the aim of avoiding associated issues.

20. In deciding whether the operator should be allowed to continue in business I have asked myself the question posed in the case of Priority Freight Limited & Paul Williams i.e. how likely is it that this operator will operate in compliance with the operator's licensing regime? In other words can the operator be trusted going forward? In balancing all the aspects of the case I have concluded that I can allow the licence to continue but only after careful consideration. My concerns remain over Mr Fuller's ability to take advice and accept that he must delegate authority and responsibility to others. His past behaviour has shown a reluctance to do so and he must accept that compliance is paramount even when his own view is that what is required is unnecessary, gets in the way of working practice, or is expensive. He must also learn to control what I believe to be a short fuse on his temper.
21. Having regard to all the above and the guidance of the Senior Traffic Commissioner in Statutory Document 10 I judge that this case meets the criteria applicable to the category "serious" as a starting point - the effect of the breaches offended the principles of road safety and fair competition. The regulatory action ordered is to curtail number of vehicles authorised for Fuller Group Hire Limited to five for a period of 21 consecutive days to be served by the 30 September 2018. I also order a suspension of the licence applicable to Smallfield Recycling Limited for 21 consecutive days – this suspension to be served at the same time as the curtailment ordered in relation to Fuller Grab Hire Limited. The net effect of these orders is that the operator will be limited to operating 5 vehicles for 21 consecutive days. Details of the vehicles to be curtailed and the dates for the curtailment and suspension to be sent to the Office of the Traffic Commissioner within 7 days of receipt of this decision. In making this decision I have taken into account the financial impact on the operator and consider the decision to be proportionate and necessary taking into account all the factors set out.
22. I also seek two undertakings – a) Proof of financial standing for Smallfield Recycling Limited for the period July to September 2018 to be sent to the Office of the Traffic Commissioner by the 31 October 2018
b) A further audit of the transport operation in respect of both licences to be undertaken no less than 5 months and no more than 7 months from the date of the public inquiry. A copy of the audit and response from the operator to any recommendations to be sent to the Office of the Traffic Commissioner within 14 days of receipt.

Repute of former Transport Manager Nicola Daw

23. Aspects of my findings in relation to Mr Fuller impact on Mrs Daw. I have stated my view as to his personality and behaviour and accept that this presented Mrs Daw with a significant challenge in fulfilling her role as a Transport Manager particularly when she was limited to 10 hours in that capacity and expected to continue as an administrative assistant for the remainder of her working week. I conclude therefore that her repute is retained but mark it as tarnished on the basis that she should have been more assertive not least by presenting the full evidence of missing evidence to Mr Fuller and setting out to the Traffic Commissioner her concerns when she resigned.

Repute of former Transport Manager Ormonde Parkes

24. Mr Parkes was deeply unimpressive as a witness. He appeared diffident and openly admitted that the he had delegated his responsibilities on these two licences in particular to transport consultant Mr Shelford. He made no effort to speak to Ms Morris and none of the drivers knew that he was the transport manager. It was submitted on his behalf that whilst he was transport manager “things were getting better” and he was confident in the arrangements in place for maintaining vehicles as he had a close relationship with the fitter. I conclude that he was transport manager in little more than name only on the basis that there is an absence of any other evidence. Against these very negative features I note that he is a transport manager on two other licences. He was appointed to one of these licences in 2013 and the latest in January 2018. I accept that there is no significant history of non-compliance on either licence and this has to be balanced against the failings identified in relation to the licences under consideration.
25. My conclusion is that Mr Parkes retains his repute for the moment but it is severely tarnished. I will ask the DVSA to conduct Desk Based Assessments of the two licences on which he is transport manager. If these find failings which reflect on Mr Parkes it is inevitable in my view that his repute will be lost. Whilst I cannot seek formal undertakings from transport managers I urge him to undertake a refresher training course and make sure that he can demonstrate a focused professional attitude and approach to the role.

Appointment of Sally Blake as new Transport Manager and consideration of additional operating centre

26. I agree to the appointment of Sally Blake as a new transport manager with immediate effect. She attended the public inquiry and should be sent a copy of this decision. She will need to ensure that she is sufficiently independent of mind and assertive in her behaviour to fulfil her statutory duties as a transport manager
27. I also agree to the approval of an additional operating centre at Hurstridge, Hathersham Lane, Smallfield, Horley, Surrey RH6 9JG for 10 vehicles.



John Baker
Deputy Traffic Commissioner

6 July 2018

