



## WEST MIDLANDS TRAFFIC AREA

### DECISION OF THE TRAFFIC COMMISSIONER

PUBLIC INQUIRY HELD IN BIRMINGHAM ON 23 JULY 2018

**OPERATOR: B SHAKESPEARE & CO LTD  
OD0190692**

#### **Decision**

1. The restricted licence OD0190692 held by B Shakespeare & Co Ltd is revoked with effect from 0001 hours on 1 September 2018, pursuant to Section 26(1)(c)(iii), (e) and (f) of the Goods Vehicles (Licensing of Operators) Act 1995 ("the 1995 Act").

#### **Background**

1. B Shakespeare & Co Ltd holds a restricted goods vehicles operator's licence for eight vehicles. There are six vehicles currently specified on the licence, which was granted in 1993. The firm operates in the scrap metal industry.
2. In May 2018 I received a report from DVSA vehicle examiner Neil Lloyd-Bowen. His report stated that:
  - i) one of the operator's vehicles had received an S-marked prohibition (denoting a serious failure in the maintenance system) for a variety of issues including split brake hose ferrules on two axles, a fractured spring leaf; a worn suspension bush and a leaking exhaust;
  - ii) on his visit to the operator in April 2018 he had discovered that regular six-week safety checks had not been carried out on vehicles between 2015 and autumn 2017;
  - iii) even after safety inspections had resumed there were gaps of more than six weeks between some of them;
  - iv) there had been no driver defect reporting system until the previous week;
  - v) the MOT failure rate was high, with four failures from the last ten presentations;

- vi) the roadworthiness prohibition rate was high at four prohibitions from six vehicles checked over the last two years [this has since risen to five prohibitions from seven checks].

### **Public inquiry**

3. I was concerned by the above report and decided to call the operator to a public inquiry. The inquiry was held in Birmingham on 23 July 2018. Present were company director David Shakespeare, Graham Timmings the company fitter, transport administrator Louise Plant and transport consultant J Crompton. Consultant Paul Carless senior represented the company. Also present was vehicle examiner Neil Lloyd-Bowen.
4. Giving evidence, David Shakespeare stated that:
  - i) his in-house fitter and maintainer Graham Timmings had gone on long-term sick leave in summer 2016;
  - ii) he (Mr Shakespeare) had failed to take any action until summer 2017; the result being that vehicles were not being given safety inspections during that 12-month period;
  - iii) when Mr Timmings had returned he had realised that there was a substantial backlog of maintenance work so CVT Vehicle Services Ltd had been employed to carry out the safety inspections (although Mr Timmings had continued to carry out defect rectification when the vehicles had returned from CVT);
  - iv) he had not realised during 2016-17 that vehicles needed to be inspected regularly or that drivers were supposed to do walk-round checks;
  - v) he had not investigated any of the prohibitions incurred by his vehicles, simply ensured that the work was done so that the prohibition could be lifted;
  - vi) he had attended an operator licence management course in June 2018 although, when I asked him what he had learnt on the course, he was unable to remember anything specific and said that he had not taken much away from it;
  - vii) he had moved from six-week inspections to four-week inspections "a couple of months ago".
5. I examined the maintenance and drivers' hours records and noted that:
  - i) almost all recent safety inspection sheets recorded numerous driver detectable defects such as broken lights and mirrors and unserviceable tyres. Most driver defect reports for dates immediately before the safety inspections recorded no defects. Mr Shakespeare accepted that he did not review the safety inspection sheets in any detail and had not noticed this. Nor had Mr Timmings;
  - ii) some driver defect reports reported the same defect repeatedly without that defect ever apparently being rectified. For example, the driver of KF57 VUT reported an air leak on the exhaust brake in increasingly frustrated tones from 2 June 2018 until 28 June 2018. Mr Timmings said that the problem was that the driver defect reports were simply placed on a hook on a board in the office and did not reach him. Mr Shakespeare said that he assumed that the defect reports were being forwarded to Mr Timmings for further action: he had not realised that this was not the case;

- iii) there were still some gaps of up to 8 weeks between safety inspections: KF57 VUT had not been inspected between 12 February and 12 April 2018 for example. The reduced four-week inspection intervals were only evident for two vehicles: the others still seemed to be on six weeks or thereabouts;
  - iv) two tyres from vehicle MX06 FZK had been recorded as having 0mm of tread at the safety inspection dated 22 June 2018. It was not clear what, if any, rectification had been carried out. Mr Shakespeare had no explanation for why the tyres had been allowed to become illegal.
6. Mr Timmings said that, after the vehicle examiner had found that the operator's torque wrench was out of calibration (and indeed had to be scrapped), the operator had purchased a new one and instructed drivers to use it when replacing tyres. VE Lloyd-Bowen expressed concern that drivers were entrusted with the task of torquing wheel nuts. The operator accepted that there was no procedure in place to ensure that wheels were re-torqued after a short time/distance.
  7. Mr Shakespeare stated that the company's work was local, with drivers rarely venturing more than 12 miles from base. I examined the tachograph infringement reports – all printed out on 19 July, four days before the inquiry - and noted that drivers were committing regular working time offences and also drivers' hours offences such as insufficient weekly rest and driving for more than 4.5 hours without a qualifying break. Mr Shakespeare said that he was not aware of these offences as he left it to consultant Mr Crompton to handle that side of things. Mr Crompton said that his job was to do the downloads and produce the analysis which he would pass to the operator for further action with drivers. No one was therefore tackling drivers about their offences.
  8. Mr Crompton stated that he performed the driver card downloads every month and the vehicle unit downloads "every three to six months." He seemed surprised when I informed him that the legal maximum interval between vehicle unit downloads was 90 days. Mr Crompton is a qualified transport manager and a JAUPT-accredited trainer: I was unimpressed by his lack of knowledge of basic tachograph laws.
  9. Mr Timmings stated that drivers were "difficult people" and it was hard to ensure that they carried out proper walk-round checks. In future, he would carry out random audits of drivers after they had done their checks. I took him to page 65 of the brief in which Mr Carless had stated, on behalf of the operator in a response to the vehicle examiner in April 2018, that the fleet engineer [Mr Timmings] "carries out a random check on one or two vehicles on most mornings, after the drivers have carried out their own checks." From what Mr Timmings had just told me (that he would now **start** to carry out such checks), this statement did not appear to be true. Mr Carless informed me that he had been told by the operator that such checks were being carried out: with hindsight, it was clear that they were not.
  10. Louise Plant stated that she had recently attended the same operator licence course as Mr Shakespeare and had benefited from it. She had worked for the company for 12 years as their bookkeeper but was now taking over responsibility for the transport side. She had assembled the document package for the inquiry today and was growing into the job.

### *Summary*

11. Summing up, Mr Carless said that the operator now had all safety checks and maintenance carried out by CVT Vehicle Services Ltd. It was clear that the split between safety checks carried out by CVT and ensuing maintenance carried out by the operator had not worked. The operator was moving to four week inspections rather than the previous six. Driver defect reporting was clearly still not good enough but

Louise Plant was now aware of what was required and would see to it that improvements were made. The operator was willing to have an independent compliance audit within six months, to offer reassurance that it was complying. The operator could survive a curtailment to five vehicles but the nature of its business meant that it could not withstand a substantive suspension: it would not be able to pick up the scrap for export and would lose business to others.

## Findings

12. After reviewing both oral and written evidence I make the following findings:
- i) the operator's vehicles have been subject to five roadworthiness prohibitions from seven stops over the last two years – (Section 26(1)(c)(iii) of the 1995 Act refers);
  - ii) the operator has not fulfilled the promise made when it took out the licence that its vehicles would be given safety inspections every six weeks. For at least 12 months from 2016 to 2017, no safety inspections at all were carried out – a wholly unacceptable state of affairs. Even since autumn 2017, there have been gaps of around 8 weeks between some inspections (Section 26(1)(e) refers);
  - iii) the operator has failed to fulfil the undertakings it made:
    - a) to keep vehicles fit and serviceable. The MOT failure rates and vehicle prohibition rates are both far above the national average;
    - b) that drivers would report defects in writing. Drivers did not record defect checks at all until May 2018 and evidence from the safety inspection sheets is still that they are failing to identify obvious defects. Where defects are identified, nothing is done about them as (almost unbelievably) there is no system to ensure that defect reports reach the fitter and are acted upon;
    - c) to ensure that rules on drivers' hours and tachograph rules are observed. Drivers are committing various infringements and there is no system to bring these to their attention. The fact that the transport consultant is only downloading the vehicle tachograph units at 3-6 month intervals is of concern. No missing mileage reports were produced at the inquiry, despite my request that they be so. Mr Shakespeare did not know what missing mileage reports were and Mr Crompton did not seem to know how to produce them. The operator is not capable of identifying instances of driving without a tachograph card.

## Balancing exercise

13. I conducted a balancing exercise. On the negative side were the findings above. On the positive side, CVT is now being used for all maintenance (not just identifying defects) and vehicles are moving towards being inspected every four weeks (although there is still some way to go before this is fully achieved). Vehicles are now being given a roller brake test at every inspection. Louise Plant has been given operator licence training with a view to her taking on more responsibility for compliance. The operator is prepared to employ Mr Crompton for four hours a week to advise on compliance (although given his poor knowledge of basic tachograph rules I do not find this altogether reassuring). The operator is willing to be audited.
14. On balance I find that the negative issues, in particular the abandonment of safety inspections over such a long period, with the ensuing and inevitable high rate of

prohibitions and MOT failures, and the continuing absence of an effective driver defect reporting system, heavily outweigh the positive ones. The complete abandonment of preventative maintenance inspections over a period of at least 12 months is an act of severe negligence and dereliction, with potential significant harmful impacts on the safety of both the operator's drivers and other road users: I did not receive the impression at the inquiry that David Shakespeare realised quite how bad his failure to secure a replacement fitter or outsource the work was.

## Conclusions

15. The question I have to ask myself (the "Priority Freight" question) is how likely is it that this operator will comply in the future? I did not gain the reassurance I was hoping for from the evidence of David Shakespeare. I would have expected Mr Shakespeare to have made more of an effort to improve his knowledge of the requirements of HGV operation from the level where he had not even realised that regular safety inspections were required and had dropped them, to something much more satisfactory. But, even after all the vehicle examiner's criticisms of the quality of maintenance and the lack of a driver defect reporting system, I find that Mr Shakespeare has taken little if any trouble to understand what is required and to ensure that it is done. He has been too ready to leave things to others and to assume – without any evidence - that they are carrying out their duties effectively. Thus the operator's driver defect reporting system is still completely ineffective today, and there is still no proper drivers' hours compliance system. The safety inspection sheets show that vehicles are frequently in a poor and unroadworthy condition when they come in for inspection, but Mr Shakespeare's lack of attention to detail has ensured that he has remained in blissful ignorance of this fact. On his performance today and the evidence so far, I have zero confidence in Mr Shakespeare's ability to run a compliant operation. It follows that the answer to the Priority Freight question is "not at all likely".
16. In coming to this conclusion I have also been influenced by the unreliability of the assurances given by the operator to VE Lloyd-Bowen in the wake of his report. Under instructions from the operator, Mr Carless gave assurances that Mr Timmings was carrying out random audits of driver walk-round checks on one or two vehicles most mornings. This proved not to be the case. In a follow-up report dated 24 May 2018 Mr Carless further stated that "Mr Timmings the fitter is very much aware of what is required." I am afraid that my conclusion from Mr Timmings' evidence is rather the opposite – he has very little idea of what is required. His defeatism – "drivers are difficult people" - about what could be done to improve driver defect-checking was not a sign of someone who knew what needed to be done and was determined to do it. In short, the operator's assurances to the vehicle examiner about better practices having been introduced having proved in large part worthless, I am disinclined to take on trust its further assurances, especially when given by a lacklustre director who has failed to understand what is required from him.
17. This being the case, it would tend to suggest a positive answer to the "Bryan Haulage" question – does the company deserve to go out of business? Because of its severe maintenance failings which have led to vehicles being on the road in a very poor condition, and because of the director's failure to grasp the mettle and take responsibility for driving through the necessary improvements, the company does not deserve to retain its HGV operator's licence. I am revoking the licence with effect from 0001 hours on 1 September 2018 under the Sections of the 1995 Act outlined at the top of this decision.
18. If the company were to apply for an operator's licence in future, I would need to find a very different and much improved compliance culture and level of knowledge in order to consider the application favourably. This must include at least one director who can persuade me that he or she has i) a basic knowledge of operator licensing and an

understanding of the role of a director in ensuring compliance; and ii) the drive and determination to ensure that all employees play their part in ensuring compliance. For the avoidance of doubt, this director is unlikely to be David Shakespeare. If expert outside advice is employed, it should be from a person who has a better understanding of the rules than the current adviser Mr Crompton.

A handwritten signature in black ink that reads "Nicholas Denton". The signature is written in a cursive style with a large initial 'N' and 'D'. Below the signature is a horizontal line.

Nicholas Denton  
Traffic Commissioner  
24 July 2018