



WEST MIDLANDS TRAFFIC AREA

DECISION OF THE TRAFFIC COMMISSIONER

PUBLIC INQUIRY HELD IN BIRMINGHAM ON 17 OCTOBER 2018

OPERATOR: GENESIS 2014 (UK) LTD

LICENCE OD1134376

Decision

1. The standard international goods vehicle operator's licence held by Genesis 2014 (UK) Ltd is revoked with effect from 0001 hours on 1 January 2019, pursuant to Section 27(1)(a) and (b) of the Goods Vehicles (Licensing of Operators) Act 1995 ("the 1995 Act").
2. The good repute of transport manager Marcus Hughes is lost, pursuant to Schedule 3 of the 1995 Act. Under paragraph 16 of that Schedule, he is disqualified with immediate effect and for the period of five years until 23 October 2023 from acting as a transport manager on any operator's licence in the European Union. At the end of this period he must appear before a traffic commissioner if he wishes to establish his repute.
3. Marcus Hughes is also disqualified for a period of five years 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. This disqualification will take effect at 0001 hours on 1 January 2019 and terminate at 0001 on 1 January 2024.

Background

Operator details

1. Genesis 2014 (UK) Ltd ("Genesis") holds a standard international goods vehicle operator's licence (OD1134376) for 40 vehicles and 12 trailers. The licence was granted on 24 December 2014. The sole director of and sole shareholder in the company is Marcus Hughes. Mr Hughes is also the nominated transport manager on the licence.

History

2. The GV79 application form for the licence was signed by Marcus Hughes on 17 October 2014. Question 15a on this form asked "Has any person named in this application (including...directors and transport managers)...been convicted of any relevant offence which must be declared to the traffic commissioner?" At the head of

question 15 was the warning (in bold) “You should read Guidance Note 15 carefully before answering the questions in this section.” Further warnings at the top of question 15 (not in bold) stated that “You must declare all relevant convictions and penalties on this form” and “You are reminded that it is a criminal offence to make a false declaration on this application”.

3. Guidance Note 15 states that: “You must notify the traffic commissioner if any person named in this application, (including...directors or transport managers).....has any of the following:
 - any conviction where one or more of the following punishments was imposed:
 - imprisonment exceeding 3 months;
 -
4. Mr Hughes answered “no” to question 15a, in effect stating that he did not have any relevant convictions.
5. Mr Hughes also signed a TM1 transport manager application form on 17 October 2014. In answer to question 11 – “Has any person named in this application been convicted of any relevant offence which must be declared to the traffic commissioner?” – Mr Hughes answered “no”.

Subsequent intelligence

6. In August 2018 I received information that Marcus Hughes had been convicted of conspiring to supply cannabis in 2005 and sentenced to 12 years imprisonment. HMRC had seized 2.5 tonnes of cannabis resin from Mr Hughes’s operating centre in Blyth Business Park, Cresswell, in 2003. At the time Mr Hughes held standard international goods vehicles operator licence OD0264027 as a sole trader trading as Abbey Freight.
7. In 2008, while still in prison, he had been sentenced to 6 years in prison, to run concurrently, for his part in a £250 million VAT fraud involving the supposed import and export of mobile phones. The fraud had been exposed or confirmed during the same HMRC raid on Mr Hughes’s premises in 2003.
8. Mr Hughes did not report either of these convictions at the time (2005 and 2008). Licence OD0264027 eventually lapsed on 28 February 2009 when Mr Hughes failed to renew it.

Public inquiry

9. In the light of this information, I decided to call both Genesis and Mr Hughes personally in his capacity as transport manager to a public inquiry, in order to consider the company’s and Mr Hughes’ good repute. The call-up letter to the operator was sent on 6 September 2018, citing Sections 26(1) and 27(1)(a) and (b) of the 1995 Act, as well as Article 4.1(a) of EU Regulation 1071/2009.
10. The inquiry was held in Birmingham on 17 October 2018. Director and transport manager Marcus Hughes attended. The company and Mr Hughes were represented by Adrian Keeling QC.
11. Mr Keeling had previously submitted a note, for which I was grateful. In it, he accepted that Marcus Hughes had not disclosed his two convictions in the application process. The note pointed out that, though separate convictions, they were both linked to discoveries made by HMRC in the 2003 raid. It was not the case that Mr Hughes had been convicted of one offence and then later reoffended. The note further pointed out

that the events in 2003 giving rise to the convictions now dated back 15 years – and 11 years before the licence was granted. The convictions were not connected with Genesis's business in any way. Genesis had operated without any significant compliance issues.

12. While accepting that the convictions appeared to trigger the mandatory loss of repute under the provisions of Schedule 3 to the 1995 Act, Mr Keeling's note stated that proportionality was an issue which had to be taken into account following the Upper Tribunal's decision *T/2018/01 David King trading as Military World*. The note also cited the case of *Arnold Transport Ltd (NT/2013/82)*, submitting that the operator's and Mr Hughes' conduct since the grant of the licence was a case of action speaking louder than words – this was a well-run business with no compliance issues which would otherwise have brought it to a public inquiry. Revocation of the licence would be disproportionate and would cause profound financial hardship to both the company and its 68 employees.
13. In the inquiry itself Mr Keeling expanded somewhat on the above arguments, but the above paragraphs are a sufficient summary for the purposes of this decision.

Evidence of Marcus Hughes

14. I asked Mr Hughes why he had ticked the "no" boxes on the application forms asking about convictions instead of declaring them. He said that he had relied on advice from the transport consultants who had assisted with the application process: their advice had been that his two convictions were not relevant, so he had not declared them. I asked if he had read the guidance notes accompanying the application forms: he said he had not.
15. I asked why he had not declared his convictions while holding his sole trader licence, as he was required to do. He stated that he had gone straight to prison after the first conviction and had overlooked the matter. The business had ceased when he had gone to prison in 2005.

Closing submission

16. Closing, Mr Keeling accepted that Mr Hughes' convictions should have been declared when applying for the licence. However, the traffic commissioner should consider proportionality. Mr Hughes had shown through his actions over four years that he could be trusted to run a compliant business. To that extent, he had rehabilitated himself somewhat in practice, even though technically it was accepted that his offences would never be spent.
17. If I were against him on Mr Hughes' repute as transport manager, Mr Keeling believed that the good repute of the company was a different issue which should be treated separately. The company had had nothing to do with the offences committed by Mr Hughes back in 2003. Its only blemish was that its application had not declared Mr Hughes' convictions. An additional (or alternative, if Marcus Hughes were to lose his repute) transport manager, David Hughes, had recently been nominated (TM1 form dated 10 October 2018).
18. The company was on the verge of expansion with a blue chip client which would create still more employment. It had a good compliance record and did not deserve to go out of business.

Conclusions

19. I accept that Genesis has been largely compliant since it was granted a licence in 2014. There have been a few prohibitions, but relatively few in comparison with its fleet size. A DVSA traffic examiner has given it a largely satisfactory report on drivers' hours

and tachograph compliance. There is nothing remotely in the company's record which would have brought it to a public inquiry were it not for the repute issue.

20. I have some sympathy for Marcus Hughes. Over the last four years he seems to have shown that he is capable of operating lawfully and compliantly and has built up an impressive and legitimate business. He appears to have put his criminal days behind him.
21. On the other hand, there is no doubt in my mind that, had Mr Hughes declared his convictions in the application forms in 2014 as he should have done, both the application by the company for a licence and his own nomination as transport manager would have been refused. Two prison sentences of twelve and six years respectively are extremely serious matters. Mr Hughes was still actually serving his twelve year prison sentence (which ran until 2017) at the time the licence was granted in December 2014 (although by then he was no longer physically in prison). It is inconceivable that either he or the very recently founded company, of which he was the sole director, would have been judged to have the necessary good repute.
22. The licence should therefore never have been granted in the first place. As well as the serious convictions, there was the additional aggravating factor that Mr Hughes' criminal activity had involved the use of heavy goods vehicles and/or their operating centre.
23. Mr Hughes' original offences were compounded in October 2014 when he falsely declared that he had no previous convictions. I am unpersuaded by his claim that he was advised by a transport consultant that they were not relevant. For one thing, as a qualified transport manager he should have had as good an understanding of what convictions were relevant as the consultant. For another, a person with his serious convictions might have been expected to read the accompanying guidance notes to the convictions question very carefully, to ensure that a proper declaration was being made. I find it highly unlikely that Mr Hughes would have relied on the advice of a consultant without even bothering to consult the guidance notes. He must have known that he was required to declare these convictions. At the very least, he turned a blind eye to the obvious.
24. Irrespective of Mr Hughes' record since 2014, it is a fact that criminal convictions beyond a certain threshold disbar one from exercising certain professions, at least until rehabilitation has been achieved. Those of transport manager and road transport operator are two such professions. Mr Hughes' failure to declare his convictions allowed him to evade such disbarment and operate in defiance of the law.
25. Mr Keeling raised the issue of proportionality, citing the Upper Tribunal's *David King* decision and Article 6 of EU Regulation 1071/2009. Article 6.1 states that Member States shall determine the conditions to be met by operators and transport managers in order to satisfy good repute. The conditions are then set out in paragraph 1 a) and b) of the Article (although it is made clear that the conditions therein are not an exhaustive list). The conditions set out in Article 6.1(b) are that the transport manager or operator have not been convicted of "a serious criminal offence or incurred a penalty for a serious infringement of Community rules" relating in particular to [there follows a list of road transport related offences related to such matters as drivers' hours, vehicle roadworthiness, drivers' entitlement, maximum weights and dimensions and animal transport].
26. Article 6.2 states that where "a serious criminal offence has been committed" or a penalty incurred for a serious infringement of the Community rules relating to the above list, a Member State should carry out a procedure to determine whether loss of good

repute would constitute a disproportionate response. If its procedure concluded that it would **not** be disproportionate then loss of repute would follow. I note that the reference is to “a serious criminal offence”: i.e. only one serious criminal offence is required to trigger the loss of repute procedure.

27. I have set out the EU legislation at some length because it appears to me that, in considering the question of proportionality, regard must be had to the context in which the reference to that concept is made. According to Article 6, if an operator commits one serious infringement relating to, say, driver entitlement, the procedure to determine loss of good repute is triggered. Annex IV of 1071/2009 defines driving without a valid licence as a “most serious infringement” which is enough in itself to trigger the loss of repute procedure for the operator and/or transport manager. If a company with 80 drivers had a driver whose licence had expired two days before a DVSA stop because he had forgotten to take his medical, the ensuing investigation might conclude that loss of repute would be disproportionate and that some lighter regulatory outcome was appropriate. Such an offence might be described as being at the lighter end of the spectrum of seriousness. By the same token, considered against all the other types of offence which merit the loss of repute process, two criminal offences carrying a total of 18 years imprisonment is an outcome very much at the other end of the spectrum where a finding that loss of repute is disproportionate is much less likely.

Findings

28. I make a formal finding that Marcus Hughes has lost his good repute (Section 27(1)(b) and Paragraph 1 of Schedule 3 to the 1995 Act refer). Three years and ten months of compliant operation is insufficient when weighed in the balance against the two very serious criminal offences described above and the failure to declare these offences both on conviction and (still worse) when applying for Genesis’s licence in 2014. Had the then traffic commissioner been aware of the full facts he would never have granted the licence in the first place.
29. Similarly, I find that the operator, Genesis, lacks good repute (Section 27(1)(a) refers). I accept that Genesis was not involved in the 2003 offences and subsequent convictions, but Mr Hughes, as sole director, sole shareholder and transport manager is clearly the controlling mind of the company. Indeed, he **is** the company. Further, the company, in making a false statement on the application form that no one connected with it had received a criminal conviction, has in fact committed a criminal offence as the warning on the application form makes clear (although I accept that this has not been prosecuted).

Decisions

30. Having concluded that Marcus Hughes is not of good repute, I am bound to disqualify him under paragraph 16 of Schedule 3 to the 1995 Act from being a transport manager on any licence. I am doing so for the period of five years. To my mind, this period is appropriate for two main reasons:
- i) it reflects the fact that Mr Hughes has acted as a transport manager for the period of almost four years when, if the truth had been known, he would not have been permitted so to do; it adds on a short extra period to reflect the deception practised in the application;
 - ii) it is less than half of his total prison sentence. Given that even an 18 month prison sentence has a period of four years after the end of the sentence before it becomes spent, it seems to me reasonable in this context that Mr Hughes have a period of five years after the end of his sentence during which he may not act as a transport manager. Although his sentence ended in 2017 he was of course

already acting as a transport manager: his period of disqualification should run from today rather than the end of his sentence. Before he can re-establish his reputation at the end of that period, Mr Hughes must appear before a traffic commissioner;

- iii) it pays some respects to his good record of compliance since 2014. Disqualifications from the profession of road transport manager for people with convictions attracting such lengthy prison sentences would normally be indefinite or of much greater finite length.
31. For the reasons outlined in the paragraph above, and having performed the same balancing act described therein, I conclude that Mr Hughes also deserves to be disqualified under Section 28 from holding a licence in the future. In deciding upon the length of his disqualification, the same issues set out in paragraph 30 above apply. I have also taken account of paragraph 93 of the STC's Statutory Guidance Document 10. I conclude that a disqualification period of five years is proportionate, appropriate, and in line with the STC's guidelines.
32. I am not disqualifying the company Genesis from holding a licence in the future. It may be that, if it restructures itself so that Marcus Hughes is no longer the controlling mind or majority shareholder of the company, an application for a licence would be eligible.



Nicholas Denton
Traffic Commissioner
22 October 2018