



SOUTH EASTERN AND METROPOLITAN TRAFFIC AREA

DECISION OF THE DEPUTY TRAFFIC COMMISSIONER

**PUBLIC INQUIRY HEARD AT IVY HOUSE, IVY TERRACE, EASTBOURNE ON 22
JANUARY 2019**

**OK1131817 V LARKIN LIMITED
OK2011017 ON POINT CONSTRUCTION LIMITED**

Decision

OK1131817 V Larkin Limited

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

Licence revoked with effect from 18 February 2019.

Vincent Christopher Larkin disqualified for a period of two years with effect from 18 February 2019 from holding or obtaining an operator's licence and from being a director of company that does so.

OK2011017 On Point Construction Limited

Application for an operator's licence refused on grounds of failure to demonstrate fitness to hold a licence.

Background

- 1. The operator V Larkin Limited T/A Olympic Scaffolding is the holder of a restricted operator's licence OK1131817 authorising four vehicles granted on the 20 January 2015. The sole director of the company is Vincent Christopher Larkin.**
- 2. On Point Construction London Limited has applied for a restricted operator's licence OK2011017 to authorise three vehicles. The sole director of the company at the point of application was Sohayla Imanpour and at this public inquiry I was told that Vincent Christopher Larkin was intending to register as an additional director.**

3. Vincent Larkin has a significant history in relation to previous licences and compliance issues. A licence was granted to V Larkin Limited T/A Olympic Scaffolding Limited on 28 July 2006 authorising four vehicles and thereafter there were a series of unsatisfactory maintenance investigations resulting in an initial formal warning in 2007, public inquiries in 2008 and 2012 and a further inquiry on the 10 January 2012 when the licence was revoked. An appeal against that decision was dismissed by the Upper Tribunal on the 13 March 2013. A new application for a licence was made by Mr Larkin and this was refused on the 6 November 2013 when the presiding Commissioner found that Mr Larkin still showed little knowledge of the drivers' 'hours' rules. At that hearing a link was also made to a company Da Vinci Scaffolding Limited. On the 1 April 2014 that licence was revoked on the grounds that the sole director who was Mr Larkin's father had no real involvement with the business and that in fact Mr Larkin was the operator. An application for the current licence was granted on the 20 January 2015 subject to a delayed commencement date of the 1 April 2015 and a number of undertakings including a training requirement for a Mr Humphries who at that time was working for Mr Larkin.
4. On the 26 January 2018 a letter was sent to the operator by the DVSA requesting maintenance and drivers' hours' records to enable a Desk Based Assessment of compliance to be carried out. Some documents were sent but a significant number were not and those tachograph records that were sent showed infringements including insufficient weekly rest and missing mileage. Follow up letters seeking a response from the operator and the missing documents were sent in February and March 2018 but nothing was received in reply. A prohibition had been issued in respect of one of the authorised vehicles on the 1 December 2015.
5. On the 21 February 2018 an application was made by On Point Construction Limited and it was noted that the correspondence address was the same as that used by V Larkin Limited. Mr Larkin had been a director of the company from the 6 December 2017 until the 23 January 2018 and was the sole shareholder. The director Ms Imanpour was contacted and asked about these links and in a letter dated 23 March 2018 stated that On Point Construction was a brand new construction company working out of the same office as Mr Larkin's scaffolding business. The reasons Mr Larkin resigned was said to be a realisation "that we could not work together" and that Mr Larkin "will not have any involvement in the management of the licence"
6. In light of the compliance issues in relation to the licence held by V Larkin Limited and the apparent links between that licence and the new application both matters were called to public inquiry with an initial hearing on the 3 December 2018 adjourned to the 22 January 2019.

The Public Inquiry

7. Mr Larkin and Ms Imanpour attended the inquiry on the 22 January 2019 and were assisted by a transport consultant Paul Ryan. Mr Larkin and Ms Imanpour had brought their small child to the hearing (as they had done at the previous adjourned hearing in December) and as a consequence it was not possible to hear all the evidence with them both present as they needed to take care of their child outside of the inquiry room. At the outset of the inquiry Mr Larkin said that he intended to add his name as a director of On Point Construction Limited.
8. I summarised the history in the case to Mr Larkin and focused in particular on the failure to supply the information required by the DVSA in January 2018 to enable them to undertake a Desk Based Assessment. Mr Larkin said that he did not remember having been asked for the information and suggested that “Charlie Humphreys” may have been dealing with the request. I pointed out that Mr Humphreys had been a director of the company when the licence was granted in 2015 but he had resigned in April 2016 which was before the request was made.
9. I also referred to e mail correspondence between Stewart Evans from the DVSA and “Enzo A” (later identified as Enzo Antinora) which including confirmation from Mr Larkin that “Enzo” was acting on his behalf. Further there were e mails from Enzo A to Mr Stewart which stated “Mr Larkin will be checking his post again tomorrow morning for his new company card” and “he (Mr Larkin) is supposed to be scanning over his inspection and relevant defect sheets to me tonight” Mr Larkin said that he had never been asked for this information by Enzo and the first he had heard of any of this was on the day of the inquiry.
10. Mr Ryan said that one of the problems was that the maintenance provider had not been returning the PMI sheets promptly and this was still an issue. He had been assisting Mr Larkin in the last three months and had delivered some training for drivers on daily defect checks and tachograph compliance. The tachograph infringements which were noted were mainly Working Time Directive faults and some missing mileage as a result of drivers forgetting to put cards into the reader. Mr Larkin accepted that a year ago things were not in order but Mr Ryan said that he was now “chasing” Mr Larkin to make sure things were done as they should be. Mr Larkin accepted that he was not the man to manage administration and had put his trust in other people who had let him down. Mr Ryan suggested undertakings of an audit in three months and an agreement whereby he (Mr Ryan) would report back to the Traffic Commissioner if, in his view, things were not in order.
11. Some maintenance and tachograph documentation was presented to me for consideration but it was accepted that it did not cover the period requested by the DVSA. It was also accepted that no evidence of financial standing was available for V Larkin Limited – Mr Larkin stating that he did not know he needed to bring any. Mr Ryan stated that this would be available but for one vehicle only and that a period of grace would also be

required to demonstrate financial standing on the new application for On Point Construction Limited.

- 12.** Ms Imanpour said that On Point Construction Limited was an existing business which currently utilised smaller vehicles for transport needs. She had thought when the application was made that she would be able to run the business but accepted now that it needed to be shared with Mr Larkin. This decision had been made quite recently and at the moment Mr Larkin runs the business himself alongside the scaffolding company. At present Ms Imanpour has been dealing with some invoices and was looking to take on more administrative duties. She accepted that she had a “lot to learn” and didn’t know yet about tachograph requirements and would need to attend training which she was willing to do.

Findings and Decision

a) V Larkin Limited T/A Olympic Scaffolding

- 13.** It is inevitable that my decision in relation to this licence is made within the context of Mr Larkin’s compliance history. As is set out in the earlier paragraphs he has been given numerous chances to demonstrate that he can be a compliant operator including the grant of this licence following earlier revocation. Within that context it would be expected that Mr Larkin would be vigilant in ensuring that compliance levels were high and requests from the DVSA for evidence of this were responded to promptly and fully. Sadly the reality was at the other end of the spectrum. The request for the necessary documents in January 2018 produced inadequate documentation and compliance concerns were found in relation to those which were sent. I do not accept Mr Larkin’s claim that he was not aware of the request. He authorised “Enzo A” to act on his behalf, that person is a transport consultant and it is highly unlikely that he did not ask Mr Larkin for those documents. My conclusion that he did so is corroborated by the contents of the e mail exchange between the DVSA officer and the transport consultant. It is telling that Mr Larkin claims that he knew nothing about the DVSA request until it was raised by me at the public inquiry. If this is true it shows that he has not read any of the call up papers before the inquiry. Whilst I suspect he may have literacy problems it was nevertheless vital that he discovered the reason he was called to inquiry by whatever means were available to him. He also failed to bring any evidence of financial standing despite that being clearly set out as a requirement in the call up letter.
- 14.** As a consequence of the above 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 in relation to the breaches I need to balance the negative factors with the positive. I struggle to find positive factors in this case apart from the recent involvement of a further transport consultant Mr Ryan and the production of some relevant documentation at the inquiry. With reference to Statutory Document 10 issued by the Senior Traffic Commissioner I find that this case falls into the category of Serious

to Severe conduct taking into account the very poor previous history and the blatant disregard of the valid request made by the DVSA officers in January 2018.

15. Having made those findings I have to decide whether the operator is fit to hold a licence and in this regard I have asked myself the question as set out 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? My answer to this question is an emphatic no. Mr Larkin has had so many chances and each time he has not lived up to the promises made. It appears that he can manage to reach a limited level of compliance as long as someone else, transport consultant or otherwise, is in Mr Ryan's words "chasing him" but once public inquiries are over and/or the other people are not overseeing his operation, matters fall away. As I find that he cannot be trusted to be compliant going forward I ask myself whether he deserves to be put out of business and my answer is yes. It is necessary to send a strong message not only to Mr Larkin but to other operators that the regulatory regime is one which will not tolerate operators who fail to improve when given the chance to do so.
16. My order in relation to this licence is therefore to revoke the licence under Section 26 of the Goods Vehicles (Licensing of Operators) Act 1995. The revocation will take place with effect from the 18 February 2019 to allow time for the business to be wound down. The grounds for the revocation are as stated including a failure to provide evidence of financial resources.
17. In addition to the revocation I have decided that this is a case where a disqualification in relation to Mr Larkin is appropriate and proportionate. I make such an order for a period of two years during which time Mr Larkin should think carefully what he will need to do and change should he decide that he wishes to apply for a licence in the future. In the past Mr Larkin has attempted to circumvent the legislation by his father being a licence holder in name only and he is warned that he should not attempt anything similar in the future. My formal order is therefore to disqualify Vincent Larkin from holding or obtaining an operator's licence for a period of two years with effect from the 18 February 2019. I also order that he shall not be a director of any company that holds an operator's licence for the same period.

b) On Point Construction Limited

18. As I was told that Mr Larkin was about to add his name as a director of this company it follows that I must refuse this application in light of the decision detailed above. However, in any event, I would have refused the application if this was not the case. Ms Imanpour admitted that the current business is run by Mr Larkin, that she has "done a few invoices" and that she has very limited knowledge of the regulatory requirements for holding a licence. I find it is more likely than not that the original application by her alone was made in an attempt to allow Mr Larkin to continue to operate with her as "a front"

for him following his failure to produce evidence of compliance to the DVSA. My finding is supported by her earlier explanation for him being removed as a director of the company and the inadequate reasons put forward for the change of mind. She should also guard against any temptation to apply for a licence in future on behalf of Mr Larkin.

A handwritten signature in black ink, appearing to be 'John Baker', with a large initial 'J' and a long, wavy horizontal stroke.

John Baker
Deputy Traffic Commissioner

28 January 2019