



WESTERN TRAFFIC AREA

Decision of the Traffic Commissioner

Public Inquiry in Bristol, 14 February 2019

WINFORD PARKING & RENTAL LTD: PH1128847

DECISION

PUBLIC PASSENGER VEHICLES ACT 1981 (the “1981 Act”)

Pursuant to findings under Sections 17(1)(a), 17(1)(aa), 17(3)(c), 17(3)(d) (repute) and 17(3)(e) (fitness), the licensed is revoked. To allow for alternative arrangements to be made and acknowledging that some customers will be out of the country and relying on a transfer, revocation will take effect from 23:59 hours, 16 March 2019.

Pursuant to Section 28 of the Transport Act 1985, Dean Baldock is disqualified from holding or obtaining an operator’s licence or being involved in the management, administration or control of the transport operations of an entity that holds or obtains such a licence in Great Britain from 17 March 2019 for a period of five years.

Pursuant to Section 28 of the Transport Act 1985, Ryan Baldock and Kirstie Baldock are each disqualified from holding or obtaining an operator’s licence or being involved in the management, administration or control of the transport operations of an entity that holds or obtains such a licence in Great Britain from 17 March 2019 for a period of three years.

Application PH2021149 can be withdrawn and the fee refunded.

BACKGROUND

1. Winford Parking & Rental Ltd is the holder of a restricted PSV operator’s licence authorising the use of two vehicles from an operating centre at Winford Market, Winford, Bristol, BS40 8HB. The listed correspondence address is 7 Denmark Street, Bristol, BS1 5DQ. There are two listed directors, Ryan Baldock and Kirstie Baldock. The licence was granted at a public inquiry on 4 December 2014.

2. On 27 April 2018, DVSA encountered vehicle YS11HYT, a sixteen seat minibus at Bristol Airport. The driver was Philip John Kaye. He indicated that he was employed by WCP Parking SW Ltd who he said was the operator of the vehicle. Mr Kaye's driver certificate of professional competence had expired on 15 May 2017. The vehicle was displaying an operator's licence disc in the name of Winford Parking & Rental Limited, PH1128847. The customer advice note related to the business of WCP Park & Fly whilst the insurance document specified the operator as WCP Parking. DVSA started an investigation.
3. Traffic Examiner Richard Francis left telephone messages for the operator on 1 May and 22 May 2018. No response was received. Mr Francis visited the listed operating centre at Winford Market at 09:00 on 1 June 2018 accompanied by Vehicle Examiner Gary Ford. No evidence of the operator was found. Enquiries were made of other site occupants and it appeared that no minibuses were being parked at the site. The local postman indicated that any post addressed to the site would be returned as undelivered.
4. TE Francis then attended the listed maintenance provider, Baz Auto Repairs. The proprietor, Baz, confirmed that he had not provided any maintenance services to the operator for about two years. On 15 June 2018, Mr Francis sent recorded delivery letters to the registered address at 7 Denmark Street, Bristol, and to 35 Sherwell Road, Bristol, the company's registered office according to Companies House. The letters requested an urgent response. No response was received to either letter although the Sherwell Road letter was signed for by "Saville". TE Francis personally took a further copy of the letter by hand to 7 Denmark Street. 7 Denmark Street is a business called "A Touch of Thailand Massage Parlour". A member of staff took the letter but no response was received.
5. On 27 July 2018, vehicle EU04MXC, with 14 passenger seats, was encountered by Traffic Examiner Amy Comer. Driver Paul Martin Rees was not the holder of a driver CPC qualification nor did he have vocational entitlement to allow him to drive the vehicle. No operator's licence was displayed. Mr Rees said he was working for WCP. Following a phone call made by the driver, TE Comer was told that the vehicle was being operated by Winford Parking & Rental Ltd. The vehicle's MOT had expired the previous day and there were prohibitable mechanical defects. Due to the lack of licence entitlement, the vehicle was not insured.
6. On the same day, TE Comer encountered 14-seat vehicle YS11HYT. Passengers with luggage were seen to disembark from the vehicle. The driver, Leslie Howard Beale, confirmed that he was working for WCP/Mr Baldock. No operator's licence was displayed. Mr Beale was not the holder of a full unrestricted D1 driving entitlement, did not have a category D CPC, there was no PSV MOT and no Certificate of Initial Fitness. Mr Beale was at the time also driving heavy goods vehicles. He produced his tachograph card and offences were apparent. Due to the lack of driving entitlement, the insurance was invalid.

7. On 6 September 2018, YS11HYT was encountered by TE Francis. The vehicle was loaded with passengers and luggage. Mr Beale was driving. All the offences of 27 July were repeated.
8. TE Comer faced similar challenges with making contact despite also using a new address of Stoneberry House, Bristol. Directors were invited for interview on 20 August 2018 but did not attend. TE Comer called the operator and was told that the operator was aware of the appointment but was away from the office. TE Comer was given an email address to aid communication. A further date of 29 August was set but the operator was unavailable. Following further attempts to defer the interview, Mr Dean Baldock, father to the directors, attended interview represented by Mark Hammond, solicitor. The company was subsequently convicted of three offences of permitting a person to drive a vehicle on the road without the correct licence entitlement, three linked offences of using a vehicle without insurance and two offences of using a vehicle without the correct MOT certificate in force. The company was fined a total of £8,000.
9. For all these reasons, I decided to call the operator to public inquiry to consider:

Under Section 17(3)(a) of the 1981 Act, that statements made when applying for the licence has not been fulfilled, specifically

- that vehicles would normally be kept (when not in use) at the listed operating centre
- that safety inspections would be carried out every 10 weeks and by Baz Auto Repairs

Under Section 17(3)(aa) of the 1981 Act, that any undertaking recorded in the licence has not been fulfilled, specifically:

- that the laws relating to the driving and operation of vehicles used under the licence would be observed
- that you would observe the rules on drivers hours and tachographs and keep proper records
- that vehicles would be kept fit and serviceable
- that there would be effective driver defect reporting, and
- that maintenance records would be kept for 15 months

Under Section 17(3)(c) of the Act, that drivers or vehicles had been issued with prohibition notices

Under Section 17(3)(d) of the Act, that the licence holder was no longer of good repute or the appropriate financial standing

Under Section 17(3)(e) of the Act, that there had been a material change in the circumstances of the licence holder, namely no longer fit to be the holder of an operator's licence.

10. Two drivers, Philip Kaye and Leslie Beale, were called to conjoined driver conduct hearings.

THE PUBLIC INQUIRY

11. Mr Dean Baldock and Mr Ryan Baldock attended for the operator represented by Jeremy Woodcraft, solicitor. Driver Philip Kaye attended for a conjoined driver conduct hearing.
12. Finances were satisfied as a preliminary matter,

The evidence of driver Philip Kaye

13. Mr Kaye told me that, at the time of the offence, he had mostly been driving and parking cars. He hadn't been a regular minibuss driver. For that reason, he didn't think he needed his CPC. The firm had since paid for him to take it and I was shown the evidence. He was now back driving the minibus.

The evidence of Dean Baldock

14. Mr Baldock Snr told me that he was responsible for the o-licence. He was now a statutory director, the notification having been made the previous day. He had taken over the business in 2014 and had run it in the same way as it had been run previously. An application for a new licence for a stand-alone business was ready to be submitted. It was a standard national application. He was attending an o-licence course with consultant Ian Dodd who will also monitor the existing licence and ensure all is in place.
15. The o-licence had been applied for to cover a different business venture which was airport to airport transfers. The market hadn't been there as expected and that business didn't continue. He had understood that his licence had a condition that it could not be used for the park and ride service but accepted that it wasn't on the licence document. I took Mr Baldock to page 96 of my brief which was the decision letter from the public inquiry at which the licence was granted. A paragraph within it reads:

"The traffic commissioner was informed at the hearing that use of 16 seater minibuses would not be part of existing park and ride service. To be run however within existing company"

16. Mr Baldock told me that he had read this as preventing the vehicles from being used for park and ride. He also had received no feedback from drivers after the DVSA encounters in relation to using the vehicles under the o-

licence so didn't know that he needed to use them under the o-licence and DVSA had never informed him that one was needed for the park and ride work.

17. When interviewed by DVSA, he had explained that he was not charging for journeys. He had been given contact details to arrange a Certificate of Initial Fitness (COIF). He had never heard of a COIF before. The other vehicle needed a Class 6 MOT. He had booked it in for a Class 6 MOT in Kent not realising he needed the COIF first.
18. Mr Baldock produced invoices purporting to show that anyone could travel on the minibus from their yard in Bishopsworth to the airport. I noted that the passenger name on the first sheet was Karen Smith which appeared to align with the name of someone on his payroll. Mr Baldock agreed and said it may have been her travelling or she may have put her name for an unknown member of the public to travel.
19. I asked Mr Baldock about the drivers driving without entitlement. He told me that the drivers hadn't worked for him after the licence issue was pointed out by DVSA. I asked why, then, had driver Beale been caught twice. Mr Baldock told me that he may have had a week's notice. I noted that there was some time between the two offences. Mr Baldock said he might have had up to three weeks pay owed to him. I pointed out that the second offence was six weeks after the first. Mr Baldock said that he must have had six weeks worth of pay owing.
20. In relation to the correspondence address, 7 Denmark Street had been a building project. As the vehicles weren't being operated under the licence, he saw no need to update it. The same was true of the operating centre.
21. Mr Baldock hadn't been aware of the company's convictions until he saw the public inquiry bundle. He intended to apply for the case to be re-opened. There was now (since Tuesday 12 February 2019) insurance in the name of the correct entity.

The evidence of Ryan Baldock

22. Mr Baldock Jnr told me that he ran the meet and greet service at the airport. He had nothing to do with the o-licence. I asked him why, if the company considered the airport transfers were outside the scope of operator licensing, vehicle YS11HYT had, in April 2018, been displaying an operator's licence disc. He couldn't answer.
23. Mr Baldock was the applicant director for the new company. I noted from bank statements uploaded in the name of the applicant entity Winford Parking-Rentals Ltd that there were what appeared to be wage payments to driver Philip Kaye who had earlier told me that he was driving the minibus. Mr Baldock acknowledged that the new entity was paying Mr Kaye to drive the minibus but I am not sure he understood that meant, in effect, that the

applicant company, of which he was sole director, was operating vehicles illegally.

Closing submissions

24. Mr Woodcraft told me the business had operated since 2015. Mr Baldock had had contact with authorities but had never been told that the vehicles needed to be operated under the operator's licence. He had believed it was a free-to-use service so exempt. Mr Baldock (snr) had a degree of misunderstanding. He had reacted to the DVSA interview on 10 September 2018 by booking vehicles for Class 6 MOT and a COIF. He had been unclear on the requirements for an operator's licence and didn't understand the issue of the partial payment. Both vehicles had now been inspected and insured and drivers had their CPC. An operator licence awareness course was booked. Mr Baldock now understood what was required.
25. This was not an operation that was so bad that it should be put out of business. Mr Baldock did now recognise the need to comply. Moving the volumes of passengers would be a significant burden without an operator's licence. Mr Woodcraft urged me to step back from revocation.

CONSIDERATION AND FINDINGS OF FACTS

26. The law in relation to the need for an operator's licence for an operation such as this is well settled. The most relevant case to the circumstances here is that of Rout v Swallow Hotels Ltd, Queens's Bench Division, [1993] RTR 80, 157 JP 771, [1993] Crim LR 77. In allowing the prosecutors appeals, Leggatt LJ and Pill J:

"Held, that it was not necessary for the prosecution to establish a legally enforceable agreement and section 1(5)(c) of the Public Passenger Vehicles Act 1981 with its reference to 'right to be carried' did not define the only circumstances in which a vehicle was used for carrying passengers for hire or reward; that the fact that some people travelled free was not relevant to the question of whether hotel guests were incidentally funding the provision of the service afforded by the vehicles however sporadic and discretionary its operation; that the service was provided in connection with the hotel's business and included in the payment by a guest of the price of a room or meal there must be taken to be an element in respect of the amenities of the hotel, one of which was the provision of the vehicles; and that, accordingly, the defendants' vehicles were public service vehicles and the case should be remitted to the justices."

27. Mr Woodcraft had not sought to argue otherwise but did submit that Mr Baldock was confused by what was initially described as a condition on the licence but was later found to be a comment in the decision letter. Mr Baldock read one paragraph alone. Its true meaning requires it to be read in the context of its surroundings:

“Application granted on undertaking (from Kirsty Baldock) that a separate record will be kept of the journeys undertaken by licensed vehicles and the receipt for those vehicles to be produced to a traffic examiner or to the traffic commissioner on request.

Finance accepted.

The traffic commissioner was informed at the hearing that use of 16 seater minibuses would not be part of existing park and ride service. To be run however within existing company.

Applicant was advised to take advice on the main park and ride business. Vehicles used to take clients to and from Bristol Airport in small vehicles appear to be operated for hire and reward.”

28. From this, not only is it apparent that the deputy traffic commissioner was not attaching any condition prohibiting the use of licensed vehicles for the park and ride business but had in fact sought to be helpful by advising the new operator to take advice on whether or not the eight-seat vehicles required a form of licensing, probably suspecting that they did. The operator was, therefore, on notice that the operation may be unlawful. This appears to have been entirely ignored. Had the deputy traffic commissioner’s advice been followed, the operator would have known full well at that time that use of any vehicle to move paying passengers (albeit as an ancillary service to the parking itself) requires to be licensed.
29. In a case referred to in *Swallow Hotels*, namely *Albert v Motor Insurers’ Bureau [1972] RTR 230*, Lord Donovan explains the rationale behind the law in the following way:
- ‘The reasoning . . . would seem to be this: passengers, like the driver himself, can properly be left to look after themselves. After all, if the passenger elects to go by private transport he will usually know the driver, often have some idea as to the condition of the vehicle, and if he thinks that either presents a risk he need not run it. There is, therefore, no justification for imposing the additional burden on all private car owners to insure all potential passengers. But where public transport is concerned the position is different. The passenger must almost invariably take the vehicle and the driver as he finds them, and the same is true of the private hire vehicle if it is chauffeur driven: in these cases it is eminently reasonable that the operator of such vehicles should insure passengers, and this obligation is now expressed by the proviso.’*
30. Customers of this airport parking service have every right to expect that the vehicle in which they are being transported and the driver driving it are safe and legal and they are properly insured.
31. Mr Baldock continues to contend that he wasn’t ever told that the vehicles needed to operate under the o-licence and that the drivers needed to be

properly licensed. The following is an extract from the interview with TE Comer on 10 September 2018:

TE Comer: *"There has been several stated cases where clearly states that there are no exemptions from driving licence and CPC regulations for the type of vehicle and operation that you are operating. Therefore Mr Rees was driving otherwise than in accordance with the driving licence regulations and any insurance that may have been held would have been void. Can you explain why Mr Rees was driving otherwise than in accordance with the driving licence, [with] no insurance and no driver CPC qualification?"*

Mr Baldock (Snr) *I don't believe he was*

Later TE Comer *"Because the vehicles are required to be operated under the operators licence regulations, this is the reason to why the vehicles required to be tested as a Class 6/PSV, whereas the council vehicles are operated under permits and the regulations are different which allows those under permits to be operated under Class 5 MOT, which is the MOT certificates you have on both vehicles now, but wouldn't be valid for the use and operation of the business, do you understand?"*

Mr Baldock (Snr) *"I think so, if I put EU04MXC through MOT for Class 6 MOT that vehicle is fixed and I can look in to COIF for the other vehicle"*

32. The operator was put on notice at the public inquiry in 2014 that park and ride vehicles were likely to be being used for hire or reward and told to take advice. There have been several encounters with DVSA since at which drivers have been told of issues. Mr Baldock is on record as having been put on notice again in September 2018. He was represented at that time and it is more likely than not that his solicitor will have given him correct advice, especially given the settled nature of the legal point. I am forced to conclude that Mr Baldock can't be told. He believes himself above the law.
33. Mr Woodcraft submitted that vehicles had now been inspected and a maintenance contract is in place. That is true. EU04MXC was inspected on 12 February 2019 and rectified on 13 February 2019, the day before the inquiry. YS11HYT was signed off as roadworthy on the morning of the inquiry itself. No previous maintenance documentation was provided. The evidence is that, apart from MOT, the vehicles were last inspected some time in 2016. That is a clear and serious breach of the licence undertakings.
34. From the operator's bundle, it can be found that, following interview with TE Comer on 10 September 2018, EU04MXC was submitted for and passed a Class 6 MOT on 18 September 2019. YS11HYT was submitted for its Class 6 MOT on 2 November 2018. Mr Baldock cited issues with availability of tests and COIF inspectors, which may well be true, but there is no indication that the vehicles were taken off the road until properly tested and certified. There was no barrier to doing that other than cost. COIF'd minibuses are easily hired.

35. When I asked Mr Baldock snr about the repeat offending of driver Beale, his explanation was clearly being fabricated on the spot before me, moving as it did from one week's notice, to three, then six. In interview with TE Comer, Mr Baldock tells her that Mr Beale had been working for him for only 2 weeks prior to the July stop. It also arises from that interview that Mr Beale is Mr Baldock's father in law. Mr Baldock clearly lied to me about him having been given his notice.
36. Even if there was some, perhaps familial, reason why the driver must still be employed, he needn't have been driving illegally invalidating the insurance. He could have been employed in an office or parking cars, or meeting and greeting.
37. TE Comer pointed out to Mr Baldock at interview that the insurance was in the wrong entity and again may be invalidated for that reason. Mr Baldock took out insurance in the correct entity on 12 February 2019, two days before the hearing.
38. It is clear that Dean Baldock has acted as a *de facto* director of the business for some time. Ryan Baldock clearly had little knowledge of the operation of vehicles. Kirstie Baldock did not attend the inquiry and her name has never been mentioned. It is appropriate that Dean Baldock has become a statutory director and I take that as acceptance that he has been in the role *de facto* for the life of the licence.
39. In summary;
- Vehicles have not been subject to preventative maintenance inspections for two and a half years
 - There is no evidence of any driver defect reporting and the two PMIs belatedly carried out include driver reportable items.
 - Vehicles have been issued with roadworthiness prohibitions
 - One vehicle has been operated for a significant period of time (months to years) without the benefit of a Certificate of Initial Fitness which means it is unknown whether key emergency equipment and facilities such as fire extinguishers and emergency exits were in place and suitably marked
 - Neither vehicle was tested to the standard required of a vehicle used for carrying members of the public for hire or reward
 - Drivers have, on multiple occasions, driven without the necessary licence entitlement
 - One driver was specifically permitted to do so having already been stopped and interviewed by DVSA
 - As a result, vehicles have been used without valid insurance
 - Drivers have repeatedly driven without the necessary driver certificate of professional competence
 - Even when drivers have been properly licensed, it is questionable whether the insurance, in the name WCP Parking, would be valid for drivers driving within the business of Winford Parking & rental Limited

- The stated operating centre has not been used
 - An unauthorised operating centre has been used
 - Correspondence addresses have not been maintained causing significant difficulty to the enforcement agency
 - There has been a failure to co-operate with DVSA, through failing to respond to telephone and written correspondence
 - An unlicensed, linked, entity now appears to be operating the vehicles, at least some of the time
40. I find, easily, that, on the balance of probabilities. Mr Baldock snr knew that this operation was grossly non-compliant and has blatantly ignored all attempts by the enforcement agency and the police to bring it in to line.
41. I am required to conduct a balancing exercise. Two directors attended the public inquiry properly represented. Mr Baldock Snr acknowledged his position and has recorded himself as a statutory director. Insurance has been regularised, albeit two days ahead of the inquiry. Vehicles have had one safety inspection each. One vehicle was submitted for a Class 6 MOT only a week after the interview with TE Comer. Financial standing is shown as met. The site from which the vehicles operate, Strawberry House, appears suitable.
42. The volume, severity and duration of offending mean that these positives carry little weight. The demeanour of Mr Baldock Snr at the inquiry coupled with the extensive non-compliance mean that I am beyond doubt that I cannot trust him to continue to comply once the spotlight of the public inquiry has faded. The failures are severe. Members of the public have routinely been put in danger and this is aggravated by the issue of insurance being invalidated because drivers were not licensed to drive. This is an operation that needs to be stopped before someone is killed. The company and each of its directors have lost their good repute.
43. The guidance to which I must have regard¹ reminds me, at paragraph 54, that, whilst there need not be an additional feature before a disqualification order is made, it is not automatic. My balancing exercise in relation to disqualification considers the same material factors as those which I have considered in relation to revocation. In addition, I must consider the culpability of the individuals.
44. Dean Baldock has accepted by his belated notification to Companies House that he has been a *de facto* director of the business. It was clear from the absolute lack of knowledge of his son at the inquiry that he has been the controlling mind of the transport operation since the licence was granted in December 2014, just over 4 years ago. The seriousness of the matters in front of me and the fact that corrective action happened only hours before the inquiry mean that a very lengthy period of disqualification is appropriate.

¹ Senior Traffic Commissioner Statutory Document No. 10 "The principles of decision making and the concept of proportionality", December 2016

45. Ryan Baldock signed the application form and declared that the requirements of the operator's licence would be complied with. It seems he then did absolutely nothing to come through on those promises. The result is the catalogue of failures at paragraph 39 above. It is apparent from the 2014 decision letter that Kirstie Baldock attended the public inquiry in 2014 and was put on notice of the need to take advice in relation to the park and ride operation. Both need a significant period of reflection before being allowed any role in the management of a transport operation again.
46. This park and ride business enjoys a healthy trade. If its advertising told the truth, that your driver may well not be licensed, that vehicles have not been subject to safety inspections or even the right MoT, that it is a lottery whether or not insurance may be valid on any given journey, I suspect few passengers would choose to use it. The public has a right to be protected from operations like this.

DECISIONS

47. Pursuant to findings under Sections 17(1)(a), 17(1)(aa), 17(3)(c), 17(3)(d) (repute) and 17(3)(e) (fitness), the licensed is revoked. To allow for alternative arrangements to be made and acknowledging that some customers will be out of the country and relying on a transfer, revocation will take effect from 23:59 hours, 16 March 2019.
48. Pursuant to Section 28 of the Transport Act 1985, Dean Baldock is disqualified from holding or obtaining an operator's licence or being involved in the management, administration or control of the transport operations of an entity that holds or obtains such a licence in Great Britain from 17 March 2019 for a period of five years.
49. Pursuant to Section 28 of the Transport Act 1985, Ryan Baldock and Kirstie Baldock are each disqualified from holding or obtaining an operator's licence or being involved in the management, administration or control of the transport operations of an entity that holds or obtains such a licence in Great Britain from 17 March 2019 for a period of three years.
50. Following the decisions above, application PH2021149 can be withdrawn and the fee refunded.



Kevin Rooney
Traffic Commissioner for the West of England
21 February 2019