

IN THE SOUTH EASTERN & METROPOLITAN TRAFFIC AREA



D NUTTALL UK LTD

LICENCE NUMBER OK1129133

AND

JAMES DUNNETT – PROPOSED TRANSPORT MANAGER

GOODS VEHICLES (LICENSING OF OPERATORS) ACT 1995

TRAFFIC COMMISSIONER'S DECISION

Decision

1. Pursuant to adverse findings under Section 26(1)(b), (e), (f) and (h) of the Goods Vehicles (Licensing of Operators) Act 1995, and Section 27(1)(a) of the 1995 Act, the Operator no longer meets the mandatory requirements of section 13A(2) of the said Act – good repute, professional competence and financial standing. Accordingly, the Licence is revoked with effect from 23:45 on 8 June 2018.
2. I disqualify D Nuttall UK Limited and Mr Nuttall from holding or obtaining an Operator's Licence or being involved in the management, administration or control of any entity that holds or obtains such a Licence in Great Britain for a period of 2 years from 23:45 hours on 8 June 2018 pursuant to Section 28 of the Goods Vehicles (Licensing of Operators) Act 1995.

Background

3. This is the Operator's fourth Public Inquiry. It was also given the opportunity of a Preliminary Hearing.
4. At the previous Public Inquiry in March 2017, Mr Nuttall said that the significant failings with the maintenance regime, "has come as a bit of a shock to me I'll be honest" (page 53 D/E of the Hearing bundle). At the Hearing I was given assurances of a full review of the systems and assurances as to compliance moving forward. During that Hearing there was an extensive discussion on brake testing (pages 54 and 55 of the Hearing bundle). It is therefore unconscionable that the records remained wholly unsatisfactory in April 2018. Similarly, the Call-In-Letter required Mr Nuttall to bring "evidence of your systems for ensuring compliance with the drivers' hours and tachograph legislation, such as analogue charts, driver card and vehicle unit downloads, plus any infringements/analysis reports for the last 12 months" (page

10 of the Hearing bundle). The only evidence produced was Working Time analysis by way of “summary of monthly working hours”. I also have a very small selection of infringement sheets, where the infringements are not signed for. Apart from that, all I have is one disciplinary letter dated 4 September 2017.

Impounding

5. The written representations dated 28 March 2018 set out in some detail the Operator’s explanation for the vehicle being on the road on 14 December 2017. As per the chronology below, Mr Nuttall told the Traffic Examiner that it was down to an oversight because he had been so busy. This is essentially confirmed by the letter from his Romanian company, dated 8 January 2018. This is somewhat at odds with the narrative and letter from the Operator dated 28 March 2018. That letter suggests that the vehicle was brought to the United Kingdom (UK) specifically for repair work, as it would be cheaper in the UK than France. It is suggested that the vehicle was taken direct to the Scania dealership in Milton Keynes. In the attached papers, there is a screenshot of vehicle unit tracking for DJ17SCN dated 5 December 2017 at 17:35hrs. This is from the ferry booking system with a booking and immediate change. The Scania invoice produced shows a repair date of 22 November 2017 after vehicle recovery at Newport Pagnell Services. Mr Nuttall has not produced any evidence of the vehicle being in Scania’s possession between 28 November 2017 and 13 December 2017. Further, the Operator has not produced any other corroborative evidence. By way of example, vehicle data unit downloads for DJ17SCN.
6. In the written representations, the Operator states, *“DJ17SCN . . . had been on a job which ended in Calais and there was a defect on the vehicle that needed to be fixed. It was more cost effective from the Company’s point of view to have the vehicle placed in Scania in the UK than to get it fixed in France. Thus, the vehicle was taken to Scania dealership in Milton Keynes”*. The Chronology shows that in fact DJ17SCN spends a great deal of time working in mainland Great Britain (GB). Indeed it seems to spend more time here than abroad. By way of example, from 6 November 2017 until the vehicle arrives in Dover on 28 November 2017, the vehicle was in this country for 22 days. Indeed the vehicle left and returned to Dover on the same day on 28 November 2017.
7. On balance, on the evidence before me, I do not believe that this was an error caused by Mr Joe Case wanting to drive a Scania on 14 December 2017 and taking spare keys from the security hut. In my judgement, it is more likely than not that this vehicle was being used to work extensively and beyond the cabotage rules to fulfil Mr Nuttall’s commercial needs borne out to some extent by the refusal to grant an increase of authorisation on his GB Licence. On his own documentation, Mr Nuttall had vehicle DJ17SCN in GB for 10 days plus twice in 2 months. Further, whilst I note the suggestion that none of the drivers or Mr Nuttall noticed that the old vehicle disc remained in the window, the provision of a UK style trailer plate requires an element of deliberation.

Chronology

8. There are some cases where it is only necessary to set out the conduct in question to make it apparent that a Licence should be revoked and the Operator put out of business, as per 2012/034 Martin Joseph Formby t/a G&G Transport, 2012/020 A+ Logistics Ltd. In this case I set out the relevant chronology:

- 4 November 2014 Standard International Licence granted. The proposed Transport Manager resigns before grant – resignation not notified by Operator or proposed Transport Manager.
- 26 February 2015 Public Inquiry: new Transport Manager Mr Couper not in attendance. Formal warning with undertakings – training for Mr Nuttall and new Transport Manager Mr Couper.
- 28 April 2015 Mr Couper concludes his training.
- 12 May 2015 Mr Nuttall completes one day Operator Licence Awareness Training.
- 8 September 2015 Mr Couper resigns. Period of Grace request subsequently refused.
- 5 January 2016 Licence suspended pending Public Inquiry as Operator no longer professionally competent.
- 19 February 2016 Public Inquiry: Mr Nuttall and new proposed Transport Manager (Sam Mills) in attendance. Suspension lifted.
- 22 March 2016 Preliminary hearing with Mr Nuttall and Mr Mills attending due to ongoing shortcomings. Warning issued in terms of future compliance (maintenance and drivers' hours).
- 1 April 2016 Mr Nuttall lodges application to increase authorisation from 2 vehicles and 2 trailers to 3 vehicles and 2 trailers.
- 9 May 2016 Variation application granted.
- 4 October 2016 DJ12EXY stopped and found in breach of cabotage rules. Vehicle registered to Mic Logistic SRL - Mr Nuttall is sole director of this Romanian Licence holder.
- 11 October 2016 Mr Nuttall lodges application to increase authorisation to 6 vehicles and 2 trailers.
- 21 October 2016 DVSA send warning letter to Mic Logistic SRL (p.81 hearing bundle).
- 31 October 2016 Mic Logistic SRL purchases EX62EXF (p.93 hearing bundle), price in 'GBP'. Specified on GB Licence 25/11/16 to 2/2/17; 5/5/17 to 1/9/17 and 9/9/17 to 10/10/17 (p.7 hearing bundle).
- 13 February 2017 Public Inquiry Call in letter issued - to consider existing Licence and variation application after unsatisfactory maintenance assessment conclusion by DVSA.
- 21 March 2017 Public Inquiry: Variation application refused. All other aspects adjourned for Mr Nuttall to produce additional information (see p.108 hearing bundle).

28 March 2017	Transport Manager Sam Mills resigns.
30 March 2017	Mr Nuttall & Mr Dunnett sign joint letter dealing with resignation of Mr Mills and setting out details of Mr Nuttall's transport interests in Bulgaria and Romania.
3 April 2017	TM1 form lodged proposing James Dunnett working 24 hours per week.
11 April 2017	Mr Dunnett withdraws his TM nomination. Operator subsequently granted a period of grace until 15 August 2017.
19 June 2017	Formal warning with undertaking for Mr Nuttall to do further Operator Licence Awareness Training to conclude March 2017 Public Inquiry (p.109 hearing bundle).
29 June 2017	Mr Nuttall attends a one day refresher provided by James Dunnett of Karmico Ltd, Transport Consultants.
3 August 2017	TM1 form lodged proposing James Dunnett working 8 hours per week (not processed until November 2017).
21 September 2017	DVSA Traffic Examiner Operator Report marked 'Mostly satisfactory'. Mr Nuttall signs form, which states Mr Dunnett is working 10 hours per week as Transport Manager.
22 September 2017	DVSA Case Note received in the Office of the Traffic Commissioner, Eastbourne – Mr Nuttall's Bulgarian Licence no longer used. Romanian fleet drop trailers at Calais. UK fleet collect trailers this side. (p. 77 hearing bundle).
10 October 2017	EX62EXF removed from GB licence and replaced by SK16UWP.
23 October 2017	EX62EXF re-registered in Romania as DJ17SCN.
5 November 2017	(16.38) DJ17SCN leaves Dover for Dunkirk (see DFDS summary provided by Mr Nuttall on 28 March 2018.)
6 November 2017	(16.03) DJ17SCN leaves Dunkirk for Dover.
16 November 2017	(21.35) DJ17SCN leaves Dover for Calais (the vehicle was in GB for 10 days).
17 November 2017	(18.25) DJ17SCN leaves Calais for Dover.
22 November 2017	DJ17SCN receives roadside assistance at Newport Pagnall Northbound Services. Vehicle was non starting (see Scania invoice provided by Mr Nuttall on 28 March 2018). Fault rectified as vehicle leaves Dover, as set out below.
	Scania invoice for repair issued to Mr D Nuttall at Lympne address – no company name

23 November 2017	(22.57) DJ17SCN leaves Dover for Calais (12.22) DJ17SCN leaves Calais for Dover
24 November 2017	00:44 DJ17SCN leaves Dover for Calais. At 15.38 the same day DJ17SCN leaves Calais and arrives in Dover driven by Sam Mayhew.
25 November 2017	Screenshot: 'User' is Edward Stafford D Nuttall UK Limited DFDS booking system. Unit VRM DJ17SCN. 'Unit booked' and 'Change on booked' – identical date and time – 8th day in GB.
28 November 2017	Sam Mayhew drives DJ17SCN until today and the vehicle is in GB throughout (see page 83 bundle) – vehicle in GB for 14 days to this point.
5 December 2017	
13 December 2017	DJ17SCN stopped J9 M25 towing a French semi-trailer. Driver Joe Case on a journey from Lypnne (GB Licence Operating Centre) to Tamworth via Dover. Operator's GB disc for EX62EXF in window (not returned to CLO after removed from Licence). Trailer has a UK registration plate for DJ17SCN. Mr Nuttall tells Traffic Examiner by telephone that the vehicle remaining in GB in breach of the cabotage rules was ' <i>...an oversight due to a very busy period</i> ' (p.83 hearing bundle).
14 December 2017	Joe Case writes letter regarding his driving that day (see 28 March 2018 below). Letter from Mic Logistic SRL Office Manager to my office to confirm not appealing the impounding. Apologise unreservedly for the ' <i>...oversight in procedure...</i> '.
	Public Inquiry call in letter.
8 January 2018	Written representations and supporting documents on behalf of Operator and Mr Dunnett. Include Bank Statements for Operator's Euro account held in the Republic of Ireland - evidence of financial standing (£16,750) due (p.10 hearing bundle).
1 March 2018	Bundle includes a letter dated 14 December 2017 from Joseph Case, stating he took the wrong vehicle. Collected spare keys from security hut.
28 March 2018	

Financial Standing

9. Mr Nuttall failed to produce statements for the Operator's GB bank account. Indeed, he has gone to great lengths to resist providing those statements to me. I remind myself it was those very same statements, which told me so much about his European businesses in March 2017.

Mr Nuttall relies on the Company's Euro account based at a Republic of Ireland bank with its branch in Ross, Co. Wexford.

10. After the hearing, I received a letter from the GB bank setting out a number of transactions, which relate to the transport operations. I do not have original statements or stamped or other means of authenticated online statements. Mr Nuttall originally told my clerk that he was not producing the GB statements on his solicitor's advice. He did not repeat this in the hearing. In any event, it is for an Operator to cooperate with the Traffic Commissioner. The Operator has to show that financial standing is met over and above the 'ins and outs' of business. On Mr Nuttall's own evidence, the Euro account does not show the 'ins and outs' of business for the GB operation. For all I know, there may be dishonoured payments for matters key to road safety. Capital sums may be paid in and removed in quick succession.
11. Further, Mr Nuttall has a Romanian transport business and this funding may also be part of the financial standing for that entity. Mr Nuttall is also a director of a business based in Ross, Co. Wexford - Cargo Route International Limited. His fellow director is Edward Safford. Mr Stafford also assists with D Nuttall UK Limited as he is the 'user' referred to in the chronology on 5 December 2017 (DFDS booking screenshot for DJ17SCN). The 'user' company on the screen shot is 'D Nuttall UK Limited' even though the vehicle is said to be operated by Mr Nuttall's Romanian company.
12. The Impounding section of the written representations dated 28 March 2018 states : '*EX62EXF had been sold to Mic Logistics SRL shortly before 31st October 2017 (not 2016 as stated). It was sold and re-registered to Mic Logistics SRL on 23rd October 2017.* That order of events is at odds with the invoice at page 93 of the hearing bundle. The invoice is from Hammer Transport International in Dorking to M.I.C Logistic SRL. The invoice is dated 31 October 2016 and quotes the Romanian VAT number. The payment is in GBP as required by the Seller, with reference to the currency converter. Mr Nuttall signs to say he has received the vehicle 'on behalf of M.I.C Logistic SRL Romania on 11 November 2016. This is further evidence that various business accounts may used interchangeably. Accordingly, I remain of the view that sight of the Euro account statements and selected GB bank entries does not provide the full picture in terms of financial standing.
13. On 19th April 2018, Mr Nuttall requested a 28-day period to produce the original statements/seek advice. I refused. The call in letter is dated 1 March 2018 and clearly refers to the possible delays in obtaining original statement. I had already given a further period on 9 April 2018. I did agree to take into account anything further I received up to finalising this decision. I have not received any additional financial documents. It was open for Mr Nuttall to have any online printouts also authenticated by a solicitor or similar but he has not done so. In my judgement, Mr Nuttall's approach to demonstrating financial standing impacts, not only on findings on that mandatory requirement but also on the good repute of the Operator. Operator Licensing is based on trust and this requires transparency and cooperation.

Good Repute

14. I found a significant level of non-compliance with licence undertakings as follows:-
 - (i) I issued the Operator with a warning in June 2017 for all aspects before the March 2017 Inquiry, including making sure EU Licences are used appropriately.

- (ii) Mr Nuttall had a vehicle impounded under the cabotage rules used on his Romanian Operator Licence.
- (iii) The Operator failed to notify changes in the maintenance arrangements. This is a breach of a condition on the Licence.
- (iv) The Operator's maintenance documentation produced on 9 April 2018 raised significant concerns See 'TCPI1 – 4'):
- There is no brake testing regime. A number of Preventative Maintenance Inspections ('PMIs') clearly state 'not tested' next to IM 71, 72 and 73. This is across the 3 specified vehicles on the Licence going back to 10 November 2017. Vehicles are only roller brake test at MOT.
 - A number of PMIs do not include tyre tread depths and/or tyre pressures, eg LR63RJR.
 - A number of PMIs include driver reportable items where the corresponding Driver Defect Incident is NIL eg LR63RJR and GR63RJR.
 - SK16UWP left the maintenance contractor's with large red stamp to say the vehicle is not roadworthy. Nothing attached to suggest what work was done and if it was, when before being put back on the road.
 - The Daily Driver Defect Inspection records produced were a mess, many were loose and not in order. There were three separate Driver Defect Inspection sheets dated 8 January 2018 for the same driver. Two are in the same book but 5 serial numbered pages apart and one was loose. This calls into question the veracity of systems and if sheets are completed contemporaneously with the walkround check.
 - Mr Nuttall failed on a number of occasions to include the vehicle registration mark and odometer reading.
 - A PMI sheet for GR63RJR between 27 December 2017 and 10 March 2018 is missing. The PMI dated 10 March 2018 has all check boxes blank except for two which are annotated 'D' with no action taken. There is no brake check and the certificate of roadworthiness is not signed off.
 - On 17 November 2017, the Operator did the PMI for LR63RJR 'in house'. The brakes are not checked and Mr Nuttall has signed the certificate of roadworthiness even though he has no mechanical expertise.

Determination

15. Mr Nuttall has referred a number of times to serious ill health. However, I have not received any independent evidence in support of this. In any event, it is for Mr Nuttall to ensure that there are robust systems in place to ensure that each day vehicles are on the road they are safe. On the face of the chronology above this case involves an almost ongoing breach of trust. Mr Nuttall presented himself as defensive and argumentative from the outset. He talked about me working with him to enable him to increase his GB authorisation and effectively give him a "break". Regrettably, Mr Nuttall is confused about the purpose of my role. In such

circumstances, a GB Operator must be in a position to provide me with evidence so that I can be satisfied as to on-going compliance and respect for the Operator Licensing regime standards and principles. A Traffic Commissioner must be satisfied, on balance, that before any application to operate more vehicles is granted, they are confident that road safety and fair competition are in safe hands. In relation to an application, the burden of proof is on the Applicant. In terms of the existing authorisation, the burden shifts to the Traffic Commissioner.

16. There is clear and consistent case law from the Upper Tribunal that I am entitled to treat the conduct of the Sole Director effectively as the conduct of the Limited Company and repute or fitness is determined accordingly. Such an approach has received approval from the appellate tribunal on a number of occasions, as recently as 2013/008 Vision Travel International Limited and T2013/61 Alan Michael Knight.
17. The positives are the attendance of Mr Nuttall at each hearing and his attendance at two one day training sessions. He did have vehicles roller brake tested and provided written assurances as to future compliance after 9 April 2018. These cannot counter-balance the Operator's conduct since 2014 and the fact that previous assurances have not been taken forward. The Upper Tribunal helpfully set out the marker in 2009/225 Priority Freight Limited & Paul Williams that '*Promises are easily made, what matters is whether these promises will be kept: actions speak louder than words*'.
18. I remind myself of the clear guidance set out by His Hon. Michael Broderick, Principal Judge for Traffic Commissioner Appeals in NT/2013/82 Arnold Transport & Sons Limited '*It is important that operators understand that if their actions cast doubt on whether they can be trusted to comply with the regulatory regime they are likely to be called to a Public Inquiry at which their fitness to hold an operator's licence will be called into question. It will become clear, in due course, that fitness to hold an operator's licence is an essential element of good repute. It is also important for operators to understand that the Head of the TRU is clearly alive to the old saying that: "actions speak louder than words", (see paragraph 2(xxix) above). We agree that this is a helpful and appropriate approach. The attitude of an operator when something goes wrong can be very instructive. Some recognise the problem at once and take immediate and effective steps to put matters right. Others only recognise the problem when it is set out in a call-up letter and begin to put matters right in the period before the Public Inquiry takes place. A third group leave it even later and come to the Public Inquiry with promises of action in the future. A fourth group bury their heads in the sand and wait to be told what to do during the Public Inquiry. It will be for the Head of the TRU to assess the position on the facts of each individual case. However it seems clear that prompt and effective action is likely to be given greater weight than untested promises to put matters right in the future.*'
19. When I pose the question, helpfully suggested in Priority Freight: how likely is it that those before me will, in future operate in compliance with the operator-licensing regime, the answer must be that I cannot satisfy myself on balance that it will be with Mr Nuttall. Mr Nuttall has demonstrated a willingness to put commercial gain before compliance, over a sustained period of time.
20. I turn then to the question '*is the conduct of the operator such that the operator ought to be put out of business*' as per 2002/217 Bryan Haulage No.2 in my judgement the answer is 'yes'. When I pose the question whether other operators expect me to remove the Operator from the

system, I am satisfied on balance they would say “absolutely”. Whilst the proportionality principle requires Traffic Commissioners to make decisions, which are commensurate with the merits of the case, the decision must focus on the impact to road safety and fair competition that flow from the factual findings, regardless in which order the questions above are posed. I do not trust Mr Nuttall will operate under any Licence in a compliant manner moving forward and hence this decision. In March 2017, I gave Mr Nuttall the opportunity to persuade me not to take action on the GB Licence even though he and Mr Mills had turned up very ill-prepared for the Public Inquiry. The transcript of that Public Inquiry is self-explanatory. Subsequently, I gave Mr Nuttall the benefit of the doubt and accepted the assurances based on a further opportunity to do the one-day Operator Licensing Awareness Training seminar. Mr Nuttall has received a great deal of advice and warnings, during the number of previous hearings. As I sat in the Public Inquiry in April 2018, it was as if it was still March 2017. Mr Nuttall appears to have learnt nothing from his previous experiences. The overall impression I am left with now, is that the only item of interest to Mr Nuttall is his own commercial needs. These outweigh any rules, regulations or road safety.

21. When I pose the question is revocation disproportionate in the circumstances of this case the answer is ‘no’. Revocation is not disproportionate where, in the absence of any objective justification and excuse, there have been long term, sustained, repetitive deficiencies: 2009/410 Warnerstone Motors t/a The Green Bus Service. Accordingly, I have reached the decision in paragraph 1.

22. In T/2010/29 David Finch Haulage the then Transport Tribunal said:

“The principles that derive from these and other cases on the point can be simply stated. The imposition of a period of disqualification following revocation is not a step to be taken routinely, but nor is it a step to be shirked if the circumstances render disqualification necessary in pursuit of the objectives of the operator licensing system. Although no additional feature is required over and above the grounds leading up to revocation, an operator is entitled to know why the circumstances of the case are such as to make a period of disqualification necessary”.

Mr Nuttall has demonstrated a determined pursuit of commercial gain with a disdainful regard for safety and fair competition over a sustained period. At two hearings just a year apart, Mr Nuttall said he is shocked by the safety records. I am indignant on behalf of the legitimate, professional, hardworking commercial vehicle industries at his wilful self-interest. In my judgement, it is entirely proper to remove him from competition arena for a significant period as he has clearly chosen not to mend his ways. Accordingly, I have reached the Decision set out in paragraph 2 above.

Proposed Transport Manager: Good Repute and Professional Competence

23. Mr Dunnett was at the Public Inquiry in support of his nomination as Transport Manager. It was difficult to achieve a settled response on the amount of time that Mr Dunnett has actually spent in the operation. At the TEOR in September 2017, Mr Nuttall told the Examiner that Mr Dunnett was engaged 10 hours per week. When I questioned Mr Dunnett on the serious deficiencies in the records produced, he talked about the difficulties of influencing matters when not actually the Transport Manager. I do not find this explanation compelling. If Mr Dunnett was giving advice and this was not being acted upon, then he had between August 2017 and April 2018 to withdraw his nomination. He did not. It follows that in light of my findings on the maintenance records and the lack of records in terms of drivers hours and tachographs, I remain to be satisfied as to his ability to exercise continuous and effective management. I could not therefore accept Mr Dunnett as the Transport Manager on this Licence.

Sarah Bell.

**Miss Sarah Bell
Traffic Commissioner
London & South East England
1 May 2018**