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TRAFFIC COMMISSIONER FOR SCOTLAND

GOODS VEHICLES (LICENSING OF OPERATORS) ACT 1995

ANDREW ADAMS & PARTNERS T/A A&Y ADAMS & SONS – OM1118502

TRANSPORT MANAGER – MR JOHN BARR

PUBLIC INQUIRY HELD AT EDINBURGH ON 27 MARCH 2018

DECISION OF THE TRAFFIC COMMISSIONER

Background

1. The partnership of Andrew Adams & Partners who trade as A&Y Adams & Sons, 1 Hilton Farm Cottage, Kelty, FY4 0HF, holds a standard national goods vehicle operator licence, granted on 29 April 2013 for 4 vehicles and 1 trailer. The partners named on the licence are Andrew Adams (b.1959), Abe Michael Adams (b.1989) and Mrs Yvonne Cecilia Adams (b.1969). As at the date of the call up letter, 3 vehicles were specified. The current operating centre is at Blairfordel Farm, Kelty, Fife, KY4 0HP. There was a previous licence OM1011839 held by the partners.
2. The transport manager nominated on the licence at time of application and grant was Mr John Barr (b.1939) of 86 Brandy Riggs, Cairneyhill, Dunfermline, KY12 8UY. The maintenance provider is A & J Nelson Ltd of Kelty.
3. Following my receiving an adverse maintenance report from DVSA, I directed that the operator and transport manager, Mr John Barr, be called to a Public Inquiry and the usual call up letter and brief were issued and an amended call up letter was sent on 5 March.

Mr John Barr

4. In response to the call up letter, transport manager Mr John Barr wrote by email dated 23 February 2018 to say “I would inform you that due to ill health the with serious medical condition of [REDACTED] I will not be attending the Public Inquiry scheduled for 27/03/2018 at 1400 hrs. I would also inform you that I am now 78 years of age and no longer the nominated Transport Manager for Andrew Adams & Partners T/A A&Y Adams and Sons om1118502. Regards John M Barr”. Given this indication of non-attendance and given the serious matters referred to in the call up letter, I directed the caseworker to reply to Mr Barr setting out 7 questions which would assist my assessment of the operator and Mr Barr. This was done in an email to Mr Barr dated 5 March 2018. Mr Barr has not responded to that email. At no time had Mr Barr intimated a resignation to the Office of the Traffic Commissioner.

Public Inquiry

5. The Public Inquiry duly convened on 27 March 2018 in Edinburgh. Those present were Mr Andrew Adams Senior and his son and business partner Mr Abe Michael Adams. They were represented by Mr T Docherty, Solicitor, Glasgow. Mr M Dunlop, transport consultant, appeared as a witness for the operator.
6. I received the following productions:
 - evidence of finance (bank statements, credit card, finance agreement);
 - Inventory of Productions, with 6 productions; 3 DDR sheets and associated rectification sheets produced during evidence; dormant accounts for Adams Bros Ltd. A TM1 form and CPC certificate for Mr Colin Sinclair were copied, such having been sent to Leeds.

DVSA evidence (in summary)

7. The DVSA evidence, being the Vehicle Examiner's report and associated productions, was not disputed save in one minor aspect relative to a forward planner – there was such but it was of limited duration.
8. The operator came to the attention of DVSA when its vehicle PF57 EKG was checked at Craigforth (M9, A84) on 18 August 2017. The Vehicle Examiner imposed a significant immediate prohibition for 3 wheels having loose wheel nuts.

“wheel nut loose, more than one fitted to that wheel, nearside, axle 1, 5 out of 10 loose;

“wheel nut loose, more than one fitted to that wheel, offside, axle 1, 4 out of 10 loose;

“wheel nut loose, more than one fitted to that wheel, nearside, axle 2, 4 out of 10 loose (2 spigot washers easily turned using light finger and thumb pressure)”.
9. This encounter prompted a DVSA maintenance investigation (MIG) which took place on 28 November 2017. The visit was by arrangement and the Examiner received full co-operation from Mr Andrew Adams. At the visit the Examiner found that the vehicles were being inspected, inspection records kept but these were not satisfactory given that identified defects were signed off by the repairer. Much repair work is in-house. There was no driver defect reporting system, explained by Mr Adams as due to the business being a family one with things sorted before the vehicles went out. The forward planner was limited and the operator relied on the external contractor A & J Nelson (Haulage Contractors) of Kelty to say when a vehicle was due an inspection. The prohibited vehicle had wheels off in the days before the encounter on 18 August 2017.
10. The transport manager, Mr John Barr, was not present at the MIG. Mr Adams said he was not in best health and did not visit. Mr Adams' son is sitting the CPC and would become transport manager.
11. The Examiner assessed the operator's prohibition and annual test history. In the 5 years to 2 February 2018 there had been 4 passes, 1 fail PRS and 3 fails; for the previous 2 years 2 passes and 1 fail. That failure was for brake systems.
12. In respect of prohibitions, there was the 'S' marked prohibition for wheel insecurity on 18 August 2017; and 3 delayed prohibitions: 24/11/16 for ABS warning light; 12/9/16 for ABS inoperative; 25/5/16 for tyre damage. The operator replied to the Examiner's PG13 report by signing it and having Mr Barr sign it and with a letter of 13 December 2017.

13. The operator's letter of 13 December 2017 explained that they had told A & J Nelson to record vehicle mileages; the operator had put in place a proper procedure for wheel torquing and had purchased a calibrated wheel torque wrench and were arranging for periodic calibration checks; they now have a 13 month wall planner; they have purchased RHA driver defect books which are used daily. They explained that the loose wheel nuts happened "because the nuts and studs were stretched 2 days before, all the wheels on the lorry had been sandblasted and painted. The wheels had been re-torqued on the morning in question before it went out. They were checked again at lunch-time and all was well. Since the prohibition, the company removed the wheel from the lorry, pulled the studs from the drum and inspected them. The studs had wear on them which allowed movement. All the studs were replaced and all the wheel nuts were replaced. Additionally, the company replaced the rest of the studs and nuts on the other lorries as a precautionary measure". They have been monitoring the wheels and are using torque tickets as evidence of checking.
14. The operator then explained that the arrangement with the transport manager had been on a mostly casual basis. "Mr Barr is not in best health and has carried out his duties mainly by phone. The company realised some time ago that this was no longer satisfactory" and Andrew James Adams is undertaking the CPC and will become the transport manager. In the meantime, the company was seeking a temporary "hands on" transport manager.

Proposed transport manager

15. The person now nominated to be transport manager is Mr Colin Sinclair (b.1964) who lives in Dumbarton. He is the internal transport manager on operator licence JMS Plant Hire Ltd OM1060816. From the records available within the Office of the Traffic Commissioner, I was advised that in October 2014 Mr Sinclair's hours as transport manager were 6 hours per week day i.e. 30 hours. That licence is a 20 vehicle, 36 trailer licence over 4 operating centres and he gave further information that he worked 55/60 hours per week for a company. Mr Sinclair was not present at the Public Inquiry. Mr Adams' evidence was that he knew Mr Sinclair from work they do. Mr Sinclair agreed he could manage Mr Adams' licence 6 to 8 hours on a Saturday. Mr Adams hoped that son Andrew would pass his CPC (he had attempted before but kept failing one part; current domestic concerns made it unlikely he would pass before September) and shadow Mr Sinclair for the future. Prior to this agreement with Mr Sinclair, the RHA gave him the name of Mr John Reid of Stirling. Mr Adams said that they would be paying Mr Sinclair, he had told Mr Sinclair so. He was looking at £120 for the 6 hours on a Saturday and his time to and from Dumbarton (1¼ hrs each way on a good day).
16. Mr Sinclair was not at the Public Inquiry. [I have noted that the email address given for him on the TM1 form is that of Mr Dunlop, transport consultant. It is not acceptable to me for a transport consultant's email to be the email correspondence address for operator or transport manager and Mr Dunlop will be alerted to that by my Office as indeed we have alerted others]. Thus, the inconsistencies in the documentation could not be explored with him.

Finance

17. [REDACTED].
18. [REDACTED].
19. [REDACTED].

20. [REDACTED].

21. [REDACTED].

Mr Andrew Adams' evidence

22. Mr Adams is a general haulage livestock contractor in partnership with his son Abe. His wife, Yvonne, is not a partner and was meant to be taken off by Robert Mason of the RHA but he didn't do it. He agreed that the GV79 application form for this licence was signed by him on 6 February 2013 and gave the names of 3 partners – himself, son Abe and his wife Yvonne. The form was completed in Mr Mason's handwriting. Mr Mason must have taken Yvonne's name from the previous licence. He did not read the form before signing. [The reason for the new licence was non timely payment of renewal fees]. His wife no longer has an active role in the business. She looks after her father. He had put Abe in as a partner in case anything happened to him. There is no formal partnership agreement. The bank statements have his and his wife's name as that allows her to sign cheques should he be away. Abe's name will go on in near future.
23. As well as being a haulage contractor, he has a farm with cattle and sheep but not enough to survive. The vehicles are out 5 days a week. They close at weekends. The cattle float is out 2 days taking pigs to Shotts and cattle to market. He had been in business since aged 21. The business is now himself, Abe and elder son Andrew James Adams. All 3 drive and a nephew also drives sometimes. They moved to the current operating centre 4 years ago. He lives approximately 0.7 miles away.
24. He accepted the Vehicle Examiner's findings and that there were issues. Referring to 18 August 2017, he explained that he had tyres for the lorry; took the wheel trims off, there was rust so he sanded them down and blasted and gave a lick of paint. It was his fault completely. He should not have painted them. After the prohibition, he took the drum off and found the studs were worn round the collar of the drum. He replaced every stud. He had learned from this to have a torqueing system in place and not to paint the wheels at all. He described their new procedures. He recognised that there could have been a serious wheel loss.
25. Mr Barr is his wife's brother's father-in-law and a friend of the family. He had been transport manager from Mr Adams having one lorry. As he got older he was not around so much and from 2015 was not well and in hospital. He did not see much of him. He was only a phone call away. In 2017, he put his son Andrew James to start the CPC in the hope he would take over. When he got the PG13 form from Examiner Scobie, he took it to John Barr to sign. Mr Barr was not keeping well. Mr Adams told him that the Vehicle Examiner said there may be a Public Inquiry. Mr Barr said he could not handle a Public Inquiry. Mr Adams said he'd have to be notified of the Public Inquiry and he couldn't make it if he was unwell. Mr Barr said he was 78 and what was the worst they could do to him. Mr Barr was not paid, never took a penny although offered.
26. Through the RHA he had a conversation with Mr John Reid who was a transport manager who wanted to go freelance with a number of operators. Then he spoke to Mr Sinclair.
27. He is a member of the RHA and uses its services still. He got the RHA to type his response to the Vehicle Examiner. He paid for his son Andrew to undertake the RHA training. This contact was in August. If his son passes the CPC he will shadow Mr Sinclair. He's seen Mr Sinclair's set up and he is very efficient.

28. He spoke to the productions – the new forward planner spreadsheet kept in the office and to the use of the RHA defect books. Mr Mike Dunlop had been in and helped with folders for record keeping and also torque techniques, including red indicators. The report prepared by Mr Dunlop was accurate. He accepted the test history was not good. Referring to the fail on 1 August 2016, he paid a lot of money to A & J Nelson. The vehicle had been taken to them for the inspection and MOT. He did not like having to pay the fee for the re-test when it should have passed first time. He had spoken to the workshop manager about it. He felt he was in the hands of the gods when it came to the brake test. He'd been with A & J Nelson for 10 years and was harder with them now and things are better.
29. He spoke to the delayed prohibitions. He got rid of the lorry because of the ABS defects. The tyre tread defect came from the lorry driving through ground which took a lump off the tread .
30. The company Adam Bros Ltd does not trade. It is a shelf company, just in case. He understood that if that company wanted to operator goods vehicles, there would have to be an application for a new licence. He did not expect the company to apply for a licence in near future. He expected both of his sons to be in the partnership in future.
31. If the licence was revoked, his sons would be unemployed. He would work his farm. The same would apply to suspension. The cattle float is booked in advance and needed. Only he and Abe are qualified to drive livestock. He wanted to keep the licence. He is trying to improve.

Mr Michael Dunlop's evidence

32. Mr Dunlop's 4 page report was lodged as a production. He was contacted on 8 March by Mr Adams to assist with the Public Inquiry. He attended at the operating centre on 15 March. He found Mr Adams to be engaged and serious. There are 4 vehicles – 3 x 32 tonne tippers and a rigid 18 tonne cattle float. Mr Adams has pre-ordered 2 x MAN tippers on R & M arriving April and July to replace the fleet. The work is mainly local. He discussed the DVSA findings. Mr Adams had been unaware of the danger of painted wheels. There is now a calibrated torque wrench on site. Mr Dunlop gave extensive advice on wheel torque processes. He gave advice on forward planning. He found the PMI sheets used by A & J Nelson to be out of date. He advised Mr Adams to get the up to date RHA sheets to give to Nelsons. Roller Brake tests are undertaken at every inspection but the results were not attached to the PMI sheets. He gave advice on this. RHA sheet reporting is now in use. Mr Dunlop had spoken on the phone to Mr Sinclair about becoming transport manager on this licence. Mr Sinclair has very busy afternoons and could not attend the Inquiry at short notice for that reason. He has time on a Saturday to visit Mr Adams. Mr Adams wanted his son Andrew to get practical experience until capable of becoming the transport manager. Mr Sinclair knows Mr Adams well and was clear about the issues. Mr Dunlop copied the brief to Mr Sinclair so his eyes are wide open. He wants to help. Mr Dunlop had registered Mr Adams for DVSA and other updates. He found only very minor infringements when looking at the tachographs and gave advice to move to RHA analysis and also to do DVLA on line checking of driver licences. He considered there had been progress since the Vehicle Examiner's visit but some still to be made.
33. In oral evidence, Mr Dunlop confirmed the terms of his report. He had been surprised that the Vehicle Examiner had not picked up that the inspections reports were in outdated form even though Nelsons is an ATF. Lack of tyre tread depth was a glaring omission.

Consideration of the evidence and my decision

34. This is a small family business which whilst it has held 2 operator licences, should be regarded as a continuum. That there required to be a new licence in 2013 shows that the husbanding of the requirements for a licence had not been in focus and the renewal process failed. There is doubt as to who the partners are. The 2013 application could not be clearer – 3 persons are named as partners to the application. At no time up until the Public Inquiry has Mrs Yvonne Adams been removed as a partner. The finance documentation suggests that the business's bankers view her as a partner rather than just an authorised signatory and a new source of finance, the Invoice Factoring provider, has her and Mr Andrew Adams as the partners. Her status has to be resolved as currently it is inconsistent.
35. There has been insufficient attention paid by this operator to the requirements of the operator licence undertakings and conditions. On 18 August 2017, this operator sent out a vehicle on to the public roads of Scotland in a very dangerous condition. But for the most fortunate checking of this vehicle by DVSA there would have been a significant wheel loss incident, of that I am in no doubt. If ever a case showed the value of DVSA roadside checking, this is one. This decision gives me an opportunity to highlight the very serious practical contribution made by DVSA Vehicle Examiners to road safety in Scotland.
36. This operator was dangerously ignorant about what has to be done and what must not be done to ensure wheel security. All the modern literature available to operators and transport managers stresses the need for vigilance and attention to the technical specifications. PAINT IS THE GREAT ENEMY OF WHEEL SECURITY. Any operator who undertakes any of its own repairs and any transport manager worth their salt must know this.
37. This leads me to the professional competence on this licence – or rather lack of it. Here yet again I find a relationship based on family ties and friendship rather than professional competence in its literal sense. I doubt very much if Mr Barr has been up to date for a very long time. He may have been at the end of a phone. There is no such thing these days as a “phone a friend” transport manager. Nor can there be any tolerance of persons – here Mr Adams as operator and Mr Barr as transport manager who allow a person's name to stay on a licence when that person is not undertaking the role laid down by law to have continuous and effective management of the transport activities. As a matter of law, Mr Barr should have resigned a very long time ago, certainly in 2015 and maybe he should never have been on this licence in the first place. I lay blame on him for what has happened in this licence, for the danger to which others have been exposed. Being a transport manager is not a casual favour to a pal, but a serious legal commitment to ensuring goods vehicles are operated in a safe manner. He has let us all down. He may think nothing can happen to him given his age and not turning up at the Inquiry. Well at the very least I can put on record the dismay I have that he has betrayed the trust put on him when he allowed himself to be on this licence. I take his repute from him, for he has no shred of repute, as a proportionate response to his omissions. Having taken his repute, I disqualify him and do so indefinitely which will prevent him being on any other licence.
38. I implore any reader in similar position to that of Mr Barr to resign immediately.
39. I now revert to Mr Adams and the partnership licence. By allowing this casual relationship with Mr Barr, Mr Adams deprived the licence of the continuing and effective control and up to date professionalism which a proper transport manager brings to an operator licence. A proper transport manager would have identified, indeed prevented, the shortcomings found by DVSA and would have used the benefit of RHA membership and resources to keep up to date and with good processes and helpful records. Mr Barr let him down for an operator

is entitled to be guided by a transport manager. However, that does not excuse Mr Adams for Mr Adams knew that the arrangement was casual and not thorough.

40. I find that this operator has breached the licence undertakings in respect of vehicle roadworthiness and record keeping; the vehicles have attracted prohibitions albeit only one 'S' marked and those delayed ones are not at the worrying end of the scale; the test pass rate has been poor and should have prompted the serious engagement with test preparation which now appears to happen. This is a case where the external contractor has not been responsible for all repairs – in such arrangements there can be a lack of transparency and consistency as to who does what. That Mr Adams fell down so dramatically in relation to wheel maintenance is an example of this.
41. On the positive side of the balancing of matters which I have to and want to undertake is that this is the first time at Public Inquiry; that I have seen worse performance histories; that Mr Adams reacted well to DVSA's visit and to the guidance; that he displayed a degree of candour, which was not self interested in his responses; that he endeavours to provide a livelihood for his family and livestock haulage is part of that; that he has implemented the advice from DVSA and Mr Dunlop; that he has endeavoured to have his son put in place as transport manager, thwarted only by difficulties in the way of passing the examinations.
42. I have decided, applying the test in *Bryan Haulage (No.2) T2002/217* that I should not put this operator out of business and that there is the potential for trust in future – the *Priority Freight T2009/225* test.
43. However, I have no option but to take significant action against this licence given the findings in the case especially in relation to the transport manager deficiencies and the seriousness of what might have happened in August 2017. It is well settled that I do not have to wait until someone is killed or seriously injured before I can take action against a licence. Goods vehicle operator licensing is about preventing harm.
44. I am also concerned that I have not met Mr Sinclair and there are inconsistencies relating to his availability. Financial standing is not as it should be. I have been given clear evidence sufficient for 3 vehicles, not 4 and I have doubt as to whether there has been continuing financial standing. The entity issue of who are the partners needs to be resolved – there can't be one set of partners for finance bodies and not quite the same set for the operator licence. I have to re-calibrate fair competition for compliance comes at a price. The failure to engage a proper transport manager has saved money. Not having proper systems can save money and time.
45. This licence will be suspended for a minimum period of SIX WEEKS with effect from 23:59 on 30 April 2018. The suspension will be lifted after six weeks if certain conditions are met. Firstly, I require to be satisfied that Mr Sinclair or other nominee can be an effective transport manager. Mr Sinclair will be invited to a preliminary hearing with me as soon as possible (which can be attended by the operator and solicitor). Secondly, I require clarification regarding entity. Thirdly, I need be satisfied that there is continuing financial standing for 4 vehicles. The operator can offer to reduce the licence to 3 vehicles if need be.
46. During the period of suspension the vehicles specified on the licence as at today's date will be suspended from this and any other operator licence. The registration numbers are MU51 OVZ, SR07 EAX, PF57EKG and S23 NWL. These must be parked up and not used at all during the period of suspension. No risks must be taken by the operator or drivers. The vehicles are "grounded". Before going back into use, that is after the suspension is over, they must all be given a PMI.
47. That my decision is not harsher is because six weeks off the road will have an impact on this small business; that Mr Adams was candid and truthful unlike some who come before me; that he appears to be open to taking advice. He has been stupid and neglectful in the

arrangement with Mr Barr and has “faced the music”. I have written this lengthy decision as a marker against any future failings. Any future failings could mean revocation and the disqualifications of Messrs Adams.

Summary of my decisions

1. Mr John Barr has lost his repute as a transport manager and with immediate effect he is disqualified indefinitely in terms of Schedule 3 of the 1995 Act.
2. The operator licence held by Andrew Adams and Partners will be suspended for a minimum of SIX WEEKS with effect from 23:59 on 30 April 2018; the said suspension will be removed on my being satisfied as to (1) professional competence; (2) the identity of the partners; and (3) financial standing for 4 vehicles.
3. The vehicles currently specified on the licence will be suspended and cannot be used on this or any other licence during the period of suspension of the licence - section 26(6) of the 1995 Act applies.

Joan N Aitken
Traffic Commissioner for Scotland

5 April 2018