



**DECISIONS OF THE TRAFFIC COMMISSIONER
FOR WALES**

K & S Transport Ltd – OG1122907

&

Transport Manager – Steven William Handford

Goods Vehicles (Licensing of Operators) Act 1995 (“the Act”)

**Decisions made in respect of the operator’s licence held by K & S Transport Ltd
OG1122907**

1. Adverse findings are made under sections 26 (1) (c) (iii); 26 (1) (ca); 26 (1) (e); and, 26 (1) (f) of the Act.
2. The operator no longer satisfies the requirement to have sufficient financial standing under sections 13A(2) and 27(1)(a) of the Act.
3. The operator no longer satisfies the requirement to be of good repute under sections 13A(2) and 27(1)(a) of the Act.
4. The operator no longer satisfies the requirement to be professionally competent under sections 13A(2) and 27(1)(a) of the Act.
5. The operator’s licence is revoked forthwith.

Decisions made in respect of Transport Manager Steven William Handford

6. Steven William Handford has lost his repute as a transport manager. He is disqualified from holding or applying for a transport manager position within the EU for an indefinite period.

Background

7. K & S Transport Ltd were granted a standard national goods operator's licence in November 2013, at the time of the recent public inquiry it had authorisation for six vehicles and six trailers. The sole director was Katrina Kathleen Sherwin ("Katrina Sherwin") and the transport manager was Steven William Handford ("Steven Handford").

8. A preliminary hearing was held in November 2016, this resulted in a number of undertakings being recorded. An adverse DVSA investigation resulted in a public inquiry being convened for 9 April 2018.

9. The operator went into Administration in February 2018, however an application to surrender the licence by the Administrator after it received a copy of the public inquiry brief was declined by me, I did so as a result of the seriousness of the allegations raised in the DVSA investigation. Allegations were also made by the transport manager of misconduct by a DVSA examiner, this resulted in my ensuring that correspondence was sent to the operator and transport manager pointing out that I would be hearing oral evidence from DVSA officials and would be asking questions of them. It was made clear that failure to attend by the operator or transport manager should result in an expectation of adverse findings being made.

Public Inquiry

10. No one attended from the operator. VE Wayne Williams and TE Christopher Matthews attended from the DVSA. At the conclusion of the hearing I indicated to those present that I would be producing a written decision setting out why I accepted the oral and written evidence from the DVSA examiners and rejected the allegations made by transport manager Steven Handford.

Evidence

11. Before preparing this written decision, I have reviewed the following:

- Written public inquiry brief for K & S Transport Ltd OG1122907 and transport manager Steven Handford;
- Contemporaneous handwritten notes from the hearing;
- Evidence given to me during the hearing;
- *South Bucks District Council and another v Porter (FC) (2004) UKHL 33* in relation to written decisions generally; and,
- Aside from those quoted below, various authorities in relation to the approach to regulation, fitness, proportionality, and the burden of proof. – *Thomas Muir (Haulage) Ltd v Secretary of State for the Environment, Transport and Regions (1999) SLT 666*; *Crompton trading as David Crompton Haulage v Department of Transport, North Western Area (2003) EWCA Civ 64*; *Muck It Ltd and others v Secretary of State for Transport (2005) EWCA Civ 1124*; *2009/225 Priority Freight Ltd and Paul Williams; Fenlon 2006/277*; and, *2002/217 Bryan Haulage (No. 2)*.

12. Public inquiry briefs produced by both examiners who attended referred to Timothy Handford and Jonathan Handford, they are brothers and both are sons of transport manager Steven Handford. The sole director, Katrina Sherwin, is the daughter of Steven Handford and sister of Timothy and Jonathan. Jonathan Handford is listed as Company Secretary in Companies House records. An individual called Steve Handford is described in the public

inquiry brief as being less than competent, I was told that he is Timothy Handford's son and Steven Handford's grandson.

13. I referred to correspondence from Steven Handford indicating that he had suffered a stroke and would be retiring from the industry, the examiners were not aware of this.

14. VE Williams told me that the DVSA investigation was instigated after the issue of an S marked prohibition on 21 April 2017 when a brake air reservoir was insecure, a competent driver walk round check would have identified the problem. This resulted in an unannounced investigation commencing on 25 August 2017 at the operating centre at Llwyncelyn. After an explanation was given for the visit, transport manager Steven Handford was described as becoming irate and confrontational, telling the examiner that he had no right to visit without an appointment, furthermore he claimed that the examiner had no right to seize maintenance records. Of course this is not the correct position as was explained to the transport manager with VE Williams showing him his warrant card and referring to section 66 a of the Road Traffic Act 1988. The examiner went on to show Steven Handford the S marked prohibition pro forma which detailed the defects which had instigated the visit. A feature of concern to the examiner was Steven Handford dismissing this with the response "*and so?*"

15. VE Williams's evidence was that only when Timothy Handford returned to the operating centre did Steven Handford's demeanour change and he became approachable.

16. The outcome of the investigation was unsatisfactory for a number of reasons which are listed in the examiner's written report. Key features include:

- significant failures of the maintenance system identified at the fleet inspection with numerous prohibitions issued;
- safety inspection records not correctly completed with varying inconsistencies;
- mileages had not been recorded on safety inspections for the dates specified, with evidence that records had been fraudulently composed - this a feature of particular concern;
- trailer safety records had been duplicated however defects and measurements were not replicated, thus corroborating the examiner's finding that documents had been falsified;
- transport manager Steven Handford did not know where the forward planner was kept, neither did workshop staff;
- rectification work was not endorsed on the driver defect reporting system;
- workshop pit areas were not illuminated and were partially flooded, underside inspections were inadequate;
- a poor MOT test history indicating poor maintenance standards; and,
- a high prohibition rate at roadside encounters.

17. On 7 December 2017 a meeting was held with transport manager Steven Handford to issue the PG13F&G, at the commencement of the meeting Steven Handford announced that the operator was seeking a new transport manager as he "*loses it too easily*". Both Timothy Handford and TE Matthews were present and the traffic examiner issued his report which was largely satisfactory in respect of drivers' hours records (subject to the issue of falsifications, see later). Steven Handford was shown detailed mileage and safety inspection records demonstrating inconsistencies in the records, this resulted in what was described to me as a heated discussion.

18. Full details of the heated exchange are set out in the written evidence and were elaborated upon during questioning by me. Essentially, Timothy Handford also used what examiners described as cursory language, the examiners believed that he was referring to the vehicle technician, Steve Handford. Later frustrations were vented to the vehicle examiner with abusive comments. Timothy Handford went on to question the integrity of DVSA staff, on my enquiring about the details it was suggested that bribes were taken by DVSA officers at MOT tests. Examiners assured me that this had been reported to the line manager.

19. Steven and Timothy Handford accused VE Williams of behaving in such a way that he made a young lady in the office cry, I was assured that this was not the case and indeed VE Williams had found her very helpful. Comment was made that the confrontational behaviour and language from Steven Handford could have been upsetting.

20. It was claimed that the fleet inspection had only been carried out because a local maintenance contractor had reported them, it was explained that this was not the case and it was the roadside S marked prohibition which led to the investigation.

21. Complaints were also made about DVSA treatment of another operator which had been associated with K & S Transport Ltd and using the same operating centre, this involved a separate public inquiry heard before me on 3 October 2017 when that operator's licence was revoked.

22. Complaints were also made about a recent roadside prohibition, it was explained that if the operator felt sufficiently aggrieved it could have complained.

23. Another complaint related to a recent MOT failure, again reference was made to a telephone number where such complaints are handled.

24. No reply was received from the operator despite numerous attempts being made to contact the transport manager after the 14 day period given to provide an opportunity for an explanation for the mileage inconsistencies identified.

25. Very full details of the various mechanical defects are set out in the public inquiry brief, it includes a reference from transport manager Steven Handford remarking to the vehicle technician, Steve Handford that he did not look after the trailers very well, this was said whilst he inspected defects found on a trailer.

26. Examiners told me that they were concerned about the standard of the work of the vehicle technician, defects identified during maintenance investigations were easily detectable to an experienced and competent vehicle technician.

27. It was pointed out that the company which had its licence revoked by me last year used the same operating centre and also used Timothy Handford as a transport coordinator. Further it was pointed out that that entity had its maintenance undertaken by K & S Transport Ltd.

28. VE Williams told me that on his initial visit the transport manager did not know where the inspection records were kept, the conversation was confrontational and records were only located with assistance from a female in the office (the one who was supposedly upset). I was told that Steven Handford was shouting at the female as he was telling her to look for maintenance records. Timothy Handford stated that the missing records were in a box

somewhere as they had been presented to me at a recent public inquiry (he was referring to a preliminary hearing).

29. A number of inadequacies were identified in relation to the safety inspection records with the written evidence detailing a number of key features not being recorded including those relating to brake effort, tyre tread depth, roadworthiness signatures and dates, together with other failings. A feature of concern was that a trailer had duplicated inspection sheets with apparent inspections conducted on the same date but with no similarity between the defects and recorded measurements. No inspection records were submitted for another trailer despite it having been encountered on numerous occasions.

30. Safety inspection mileages on all vehicles did not match the mileage listed on the corresponding driver defect report for the same date. The number of errors contained in the safety inspection sheets gave rise to questioning the validity and/or the ability of the maintenance technician to complete safety inspection documentation satisfactorily.

31. It was put to me that the mechanical condition of vehicles and trailers within the fleet did not reflect a stringent and robust maintenance system, this corroborated by prohibitions issued at roadside encounters and MOT failures. The fleet inspection provided further evidence of the poor standard of maintenance.

32. At a visit to the operator VE Williams asked TE Matthews to access tachograph raw data to analyse the mileages for specific dates with view to assessing whether safety inspections were conducted as stated by the operator. During this visit the director Katrina Sherwin was present along with transport manager Steven Handford and Timothy Handford, comment was made to me that the transport manager was polite and approachable during that visit.

33. Several pages of detailed analysis of records are set out in the brief. VE Williams highlighted his comments with the following "*At best this represents gross mechanical incompetence and inadequacy, and I have difficulty in accepting the authenticity of any of the inspection records.*" During the public inquiry I asked TE Matthews whether he shared this opinion and he indicated that he did so, it being clear that the operator had falsified records.

34. It was explained to me that VE Williams asked TE Matthews to examine raw data with view to comparing inspection sheets for dates when vehicles and trailers were supposedly inspected. TE Matthews confirmed that on some dates when inspections supposedly took place, vehicle unit downloads confirmed that it was a very busy day of driving and he did not accept that there would have been time for a full inspection as claimed. On other dates when vehicles were supposedly inspected, there was no movement whatsoever, however an examiner would expect a vehicle to be moved on or off the pit or around the yard, even if only for a minute or two.

35. TE Matthews told me that he witnessed transport manager Steven Handford's aggressive behaviour and he corroborated the evidence of VE Williams. He also referred to the vocal behaviour of Timothy Handford who he believed was attempting to deflect the investigation by referring to other operators in the area using magnets.

36. A positive feature of the traffic examiner's report is that, aside from the clear falsification of maintenance records, there were no substantive issues in relation to drivers' hours.

37. TE Matthews also confirmed that he attended at the operating centre on 8 March 2018 at the request of my office to verify whether discs were still displayed on vehicles, their not having been returned to my office as requested, he attended with an officer from the local Police Commercial Vehicle Unit as potential difficulties were anticipated. They witnessed Steven Handford again behaving aggressively to VE Williams with similar profanities to those made on previous occasions. He felt that matters did not get out of hand on 8 March 2018 as DVSA examiners were accompanied by a police officer.

38. I was told by both examiners that it appeared that Timothy Handford appeared to be in control despite not being a director. It was also Timothy Handford who emailed the forward planner to VE Williams. TE Matthews told me that any information required was provided by Katrina Sherwin or Timothy Handford.

39. Both examiners told me that Katrina Sherwin was at all times helpful and sought to assist, they felt that she had been put in a difficult position and had no personal criticism of her.

40. I sought to identify positive features as a result of the investigation, they included:

- a TE report which was largely satisfactory in respect of drivers hours compliance;
- roller road brake tests had been conducted four times a year following the preliminary hearing before me in 2016, as required in a specific undertaking;
- a driver had been identified at the same hearing who had not been undertaking walk round checks correctly, there was an undertaking that the named individual driver be audited. The audit checks of the driver had indeed been carried out;
- as also required at the preliminary hearing, Steven Handford had attended a specialist two day transport manager refresher training course (although in correspondence he claimed to have passed the course, implying an element of pass/fail);
- the preliminary hearing also resulted in an undertaking to have an audit. Although that audit had not been completed as result of the DVSA seizing records, the operator had commissioned an audit as required.

Material considerations and findings of fact.

41. I accept all of the DVSA evidence and adopt it as fact.

42. Any allegation of corruption or misbehaviour by DVSA staff has not been substantiated with any evidence. It is clear that allegations were made in an endeavour to deflect diligent DVSA examiners in conducting an investigation.

43. I remind myself that Steven Handford was put on specific notice that I would be questioning DVSA examiners about allegations that he made and that he would need to attend to support what he claimed. The evidence of both examiners is both credible and indeed compelling. Steven Handford's allegations in respect of VE Williams were wholly unfounded and false. I note that in his letter of complaint to me that Steven Handford was vitriolic in his complaints about VE Williams and in contrast was fulsome in his praise of the professionalism of TE Matthews. Unfortunately for Steven Handford, TE Matthews unequivocally corroborates the evidence of VE Williams.

44. Failings had been identified previously at the earlier preliminary hearing before me and as a result Steven Handford attended a two-day transport manager refresher course. This does not appear to have resulted in any increase in knowledge or awareness of the responsibilities of a transport manager. It is clear to me that Steven Handford was the

individual with the title of transport manager but he had little or no real control, his concept of managing was to shout at people telling them to get something done.

45. Unsubstantiated false allegations against examiners are unacceptable. It is also wholly unacceptable to falsify records as has happened in this case, I have no hesitation in confirming that records were falsified as set out by DVSA examiners who attended before me. I remind myself of the decision of 2005/087 Duckmanton in relation to falsification of records.

46. Aside from making unsubstantiated false allegations against examiners and falsifying records, vehicles and trailers were not maintained in a safe manner, putting road safety at risk. Other compliant operators who do things properly are at a competitive disadvantage when compared with K & S Transport Ltd.

47. I have sought to identify both positive and negative features in conducting a balancing exercise. The positive features listed at the end of the section on evidence are heavily outweighed by the significant road safety concerns as a result of the maintenance investigation, falsification of records, and additionally unsubstantiated false allegations against DVSA officials.

48. When I ask myself whether I trust this operator, I answer in the negative.

49. I remind myself that operator licensing is based on trust and in 2012/034 Martin Joseph Formby t/a G & G Transport; the Upper Tribunal said *“traffic commissioners must be able to trust those to whom they grant operator’s licences, to operate in compliance with the regulatory regime. The public and other operators must also be able to trust operators to comply with the regulatory regime.”*

50. Judge Brodrick, in the case of 2006/277 Fenlon said:

“It has been said on many occasions that trust is one of the foundation stones of operator licensing. Traffic Commissioners must be able to trust operators to comply with all the relevant laws, rules and regulations because it would be a physical and financial impossibility to police every aspect of the licensing system all day and every day. In addition operators must be able to trust other operators to observe the relevant laws, rules and regulations. If trust between operators breaks down and some operators believe that others are obtaining an unfair commercial advantage by ignoring laws, rules or regulations then standards will inevitably slip and the public will suffer.”

51. I also remind myself of comments from the Upper Tribunal at paragraph 19 of NT/2013/028 Arnold Transport and Sons Limited v DEON!:

“the impact of unfair competition is insidious in that it gradually and subtly undermines the confidence of compliant operators that their competitors will comply with the regulatory regime and thus compete fairly. What matters is the perception that other operators are competing unfairly not whether they are achieving any benefit as a result. Once rumours, of unfair competition spread, (or clear evidence of it become apparent), the assumption will be made that it must be advantageous because there would be no point in running the risks involved if it was not. It is also corrosive because once rumours of unfair competition (at the very least), begin to spread the perception that some operators are competing unfairly (whether or not they profit by doing so) has a damaging effect. It means that normally compliant operators will feel tempted to “cut corners” in relation to the regulatory regime in order to remain in business. Some may decide to resist that temptation but others

are likely to succumb. The end result, if swift and effective steps are not taken to stamp out unfair competition, is that the operators who are most determined to remain compliant will be at greatest risk of being put out of business, even though they are the very operators who most deserve to remain in the industry. Trust, whether between operators and the traffic commissioner or between operators themselves, is all too easily destroyed. Rebuilding it, if that is even possible, is likely to be a long and slow process.”

52. In the case of 2007/459 KDL European Ltd the court said:

“We are satisfied of the need “to make an example of the operator so as to send a warning to the industry as a whole”. This is consistent with the approach by the five-judge Court of Session in the Thomas Muir case (see paragraph 2(xiii) above) where deterrence is expressly mentioned (“in particular for the purpose of deterring the operator or other persons from failing to carry out their responsibilities under the legislation”). This is not by way of punishment per se but, as Lord Cullen said, is “in order to assist in the achievement of the purpose of the legislation”. We answer the question posed in 2002/17 Bryan Haulage (No.2) “is the conduct such that the operator ought to be put out of business” in the affirmative. And we judge this at the date not only of the public inquiry but also of the appeal. This is a bad case and we hope that the message sent out will be clear to all.”

53. When I ask myself the Priority Freight question, I answer in the negative as I do not trust the operator. In any event the limited company is in Administration. I answer the Bryan Haulage question in the affirmative. My decision to revoke the licence is an obvious one.

54. It is manifest that Steven Handford does not have the technical skills to undertake a proper transport manager role, similarly, his character also makes him unsuitable. I have no hesitation in confirming that he loses his repute as a transport manager. Legislation provides that I must disqualify him from holding or applying for any transport manager position within the EU, this is either for a specific period of time or indefinitely – or - until a specific act has occurred. Ideally I would have liked to have disqualified Steven Handford for well over a decade and additionally required him to take and pass fresh examinations before he took up any new transport manager role. The advice from the Upper Tribunal in such cases is that I disqualify the transport manager indefinitely with a note as to my expectation.

55. Although both examiners felt that Timothy Handford was the individual who appeared to have most control over the licence, there was in my view insufficient evidence for me to make any formal finding that he was a shadow director, as defined in by section 251 of the Companies Act 2006. I remind myself whilst the standard of proof is the balance of probabilities, before making any adverse finding, the more serious an issue or allegation, the more cogent the evidence that is required. There is insufficient cogent evidence in this case for me to make a finding that Timothy Handford was a shadow director.

56. Theoretically I could disqualify Katrina Sherwin under section 28 of the 1995 Act, however I reflect that she was fully cooperative with DVSA officials and sought to be open and helpful at all times. I have little doubt that Katrina Sherwin will regret that her family has allowed her to be nominated as sole director. I do not make any finding under section 28 of the 1995 Act in respect of Katrina Sherwin.

Decisions

57. I make decisions as set out in paragraphs 1-6, above.

Other

58. I commend the two examiners who gave evidence before me. Both examiners have acted in an exemplary manner in dealing with individuals who sought to deflect from their own serious misconduct by making false allegations.

A handwritten signature in black ink, appearing to read 'Nick Jones', with a horizontal line underneath the name.

Nick Jones
Traffic Commissioner for Wales
Comisiynydd Trafnidiaeth

17 April 2018