

TRAFFIC COMMISSIONER FOR SCOTLAND

GOODS VEHICLES (LICENSING OF OPERATORS) ACT 1995

ALLEN TRANSPORT LTD – OM1125842 AND OK1122186

MR DANIEL ALLEN, TRANSPORT MANAGER

PUBLIC INQUIRY HELD AT EDINBURGH ON 29 MARCH 2018

DECISION OF THE TRAFFIC COMMISSIONER

Background

1. Allen Transport Ltd (Companies House England & Wales 08405591), (hereinafter “Allen Transport”) registered office 27A Maxwell Road, Northwood, Middlesex, HA6 2XY was incorporated on 15 February 2013 and has a sole director and person with significant control, Mr Daniel Joseph Allen (b.1975).
2. On 2 January 2014, Allen Transport, with correspondence address and operating centre at London Gateway Service, Barnet Way, London, NW7 3HU was granted a standard international operator licence for 10 vehicles and 2 trailers. Mr Daniel Allen was nominated as transport manager. Maintenance was stated as in house at 6 weekly intervals. This SEMTA operator licence has the number OK1122186.
3. On 14 January 2014, Allen Transport was granted a standard international operator licence to operate 12 vehicles and 2 trailers. As at the date of the call to Inquiry, the operating centres recorded on the licence were R A Commercials Ltd, Eastfield Industrial Estate, Penicuik, EH26 8HJ; Loch Hills Farm, Dyce, AB21 7AS; and P. Flannery Plant Hire Oval Ltd, Bridgehaugh Industrial Estate, Off A947, Newmachar, Aberdeenshire, AB21 7NY. Mr Allen was nominated as transport manager. The stated maintenance providers were given as R A Commercials Ltd of Eastfield aforesaid; W J Brown of Dunecht AB32 7BS; All Trucks Aberdeen Ltd of Kinellar AB21 OSH and Bridgehaugh Industrial Estate, Newmachar, AB21 7NY – all at 6 weekly frequency. This Scottish licence has the number OM1125842. The Newmachar site had attracted opposition from Aberdeenshire Council.
4. In April 2017, the operator applied to increase the authorisation on the Scottish licence to 17 vehicles and 2 trailers at the Newmachar site. That variation application attracted opposition from Aberdeenshire Council, with the Council very concerned about road safety at the point of access and egress to the private track within the Bridgehaugh Industrial Estate premises. The use of the operating centre at Bridgehaugh, Newmachar site was subject to a condition imposed in September 2016 requiring works to be done to the access track to the satisfaction of the Council, that variation having been subject to Council objection. By 31 May 2017, the Council had reached an understanding with the operator in respect of the access to the site and the Council’s formal objection was withdrawn.

DVSA interest

5. On 11 April 2017, Traffic Examiner Jarvis was on duty at a road check in Aberdeen. Vehicle FJ06 JZX was checked. It bore a disc from OM1125842 Allen Transport Ltd yet that vehicle was de-specified on 17 September 2016. The driver was Mr Liam Coyle (b.1990). He said he was en route from Newmachar to Balmedie and was employed by Allen Transport. The vehicle had an analogue tachograph. The Examiner found no infringements for that day. However, the driver had 42 charts dating from 2 March 2017. Charts for other drivers were within the vehicle i.e. had not been handed in or taken by the operator for analysis. The vehicle FJ06 JZX was re-specified after this encounter.

Preliminary hearing

6. Given this adverse encounter by DVSA and given the variation application for the Scottish licence which sought an increase in authorisation, I decided that, at very least, I should see the operator at a preliminary hearing. This was held at Aberdeen on 26 January 2018 and attended by Mr Daniel Allen and his transport consultant, Mr Paul Shea.
7. As part of my preparations for the preliminary hearing, I asked the caseworker to provide me with performance reports for both the Scottish and the SEMTA licences. On perusing the annual test reports for the SEMTA licence, I noted that the vehicles specified on the SEMTA licence had been presented for annual test, not in London as might be expected, but in Scotland. I put this to Mr Allen at the preliminary hearing and he had to admit to the operation of these vehicles not in SEMTA where authorised, but in Scotland and not over a short period. Given the emergence of this evidence from the performance reports, I decided that there would have to be a Public Inquiry.
8. After consulting my esteemed colleague the Traffic Commissioner for SEMTA, Miss S Bell, it was agreed that I would call the Scottish and SEMTA licences to a Public Inquiry in Edinburgh. Call up letters were issued in respect of the two licences and Mr Daniel Allen as transport manager. Thus, I conducted the Inquiry as the Traffic Commissioner for Scotland and as a Deputy Traffic Commissioner in the rest of Great Britain.

Public Inquiry

9. The Public Inquiry was held at Edinburgh on 29 March 2018. Those present were Mr Daniel Allen, director and transport manager, represented by Mr Harry Bowyer, Barrister, Derby, assisted by paralegal Mr J Trousdale. Messrs David Collins and Neil Lever of Traffic Law Solutions Ltd, Lancashire were present as witnesses. Allen Transport employee, Ms Laura Docherty, was present as an observer.
10. The Public Inquiry was very focussed thanks to the productions submitted in advance and supplemented by further productions lodged during the giving of evidence. I commended Mr Bowyer for his preparation.
11. The documentation for the Inquiry which can be taken as read into the record comprised the following:
12. From the Office of the Traffic Commissioner:-
 - (a) Public Inquiry brief of 129 pages, including transcript of the January preliminary hearing; DVSA report; DVSA performance reports for the licences; and licensing documentation;
 - (b) addendum with vehicle lists for the 2 licences as at 5 March 2018;
 - (c) letter dated 5 March 2018 narrating vehicle specifications and removals on the two licences made following the Preliminary Hearing on 26 January 2018.

From the operator:-

- (a) Witness Statement of Daniel Allen;
- (b) Transport Operator Compliance Report (58 pages) from TLS dated March 2018;
- (c) forward planner – vehicles listed copied;
- (d) print out of sub contractors used in period 7/1/2015 to 26/3/2018;
- (e) email thread from Norscott Truck & Van Ltd, November 2017 re-failed MOT for headlamp aim;

- (f) correspondence dated 28 February 2017 with Scania Altens re failed brakes chamber at MOT;
- (g) 4 invoices from W J Brown Mechanical Services Ltd of Westhill re. MOT checking and test presentations;
- (h) evidence of financial standing – bank statements;
- (i) vehicle inspection and other records – these were returned to the operator given that these are needed for ongoing operation.

Financial Standing

13. The bank statement evidence showed this operator to have very considerable credit balances over the preceding 3 months. Thus, whilst issues of fair competition and payment of taxes were referred to in the Inquiry, the operator easily demonstrated availability of finance for the 2 licences (£122,350 required).

Vehicle history – OM1125842

14. As at 5 March 2018 these vehicles were specified on the Scottish licence all having been specified on 26 January 2018 i.e. immediately following conclusion of the Preliminary Hearing in Aberdeen and coming from the OK licence.

- 1. EU66 XBR
- 2. EU63 FDV
- 3. EU63 FDP
- 4. EU17 VBG
- 5. EU17 VBF
- 6. EU16 GGZ
- 7. EU16 GGY
- 8. EU14 KUJ

15. Also specified were:

- 9. KW15 ZZV specified on 22/4/2016
- 10. FJ06 JZX specified on 25/5/2017
- 11. EU17 VBE specified on 24/3/2017
- 12. EU17 VBD specified on 24/3/2017

16. On 26 January 2018 these vehicles were removed from the Scottish licence:-

- 1. LT08 NTX
- 2. MX57 EVP
- 3. KX05 BAA
- 4. MX57 EVU
- 5. EO15 SFZ
- 6. BX07 OHP
- 7. BX07 OHR
- 8. MX57 LVD

17. Thus, on 26 January 2018 8 vehicles were removed from the Scottish licence and 8 vehicles were specified thereon. 4 vehicles which had been specified on dates in 2016 and 2017 remained on the Scottish licence making a total specified on 5 March of 12 i.e. the amount authorised by the Scottish licence. The 8 vehicles specified on 26 January all came from the OK licence.

Vehicle history – OK1122186

18. As at 5 March 2018, these vehicles were specified on the SEMTA licence:-

1. LT08 NTX specified on 26/1/2018 (ex OM1125842)
2. EO15 SFZ specified on 26/1/2018 (ex OM1125842)
3. CU11 AAN specified on 23/1/2017

19. Vehicles de-specified on 26 January 2018 were:-

4. EU17 VBG (to OM1125842)
5. EU66 XBR (to OM1125842)
6. EU16 GGZ (to OM1125842)
7. EU16 GGY (to OM1125842)
8. EU14 KUJ (to OM1125842)
9. EU63 FDV (to OM1125842)
10. EU63 FDP (to OM1125842)
11. EY64 BWZ (to OM1125842)

20. DVSA encountered vehicle FJ06 JZX (11 April 2017)

Specified on OM licence 28/4/2016 – 17/9/2016

Re-specified on OM licence on 25/5/2017

Not ever specified on OK licence.

21. **Vehicles on the operator's OM forward planner at the Public Inquiry 29 March 2018 and where currently specified**

		as at 5/3/18	Current
1.	(FS) FJ06 JZX	OM	n/s
2.	(*) BX07 OHP	n/s	n/s
3.	(*) BX07 OHR	n/s	n/s
4.	MX57 EVP	n/s	n/s
5.	MX57 EVU	n/s	n/s
6.	(*) MX57 LVD	n/s	n/s
7.	LT08 NTX	OK	n/s (removed from OK 20/3/18)
8.	EU63 FDP	OM	OM
9.	EU63 FDV	OM	OM
10.	EU14 KUJ	OM	OM
11.	EY64 BWZ	n/s	n/s
12.	EO15 SFZ	OK	OM (removed from OK 20/3/18)
13.	KW15 ZZV	OM	OM
14.	EU16 GGZ	OM	OM
15.	EU16 GGY	OM	OM
16.	EU66 XBR	OM	OM
17.	EU17 VBD	OM	OM
18.	EU17 VBE	OM	OM
19.	EU17 VBF	OM	OM
20.	EU17 VBG	OM	OM
21.	EU17 VDK	n/s	OM (removed from OK on 20/3/18)
22.	CU11 AAN	OK	n/s
23.	SFCL 73	n/s	n/s

Trailers:

1. C428281
2. C456542
3. C397167

22. From the foregoing 12 vehicles are specified on the OM licence; 3 are the vehicles hitherto specified on the OK licence but removed on 20 March 2018; and 8 vehicles were not specified on OM or OK as at 5 March or 29 March.
23. That listed as 1. (FS) is a vehicle Mr Allen said in evidence was for sale. Those listed as 2 (*), 3 (*) and 6 (*) are vehicles Mr Allen said he would be willing to sell.

Mr Allen's evidence

24. Mr Allen's evidence was set out in his 18 page witness statement as supplemented by his oral evidence. The written statement can be referred to for its terms. In summary, Mr Allen's written and oral evidence came to this.
25. Mr Allen previously held sole trader licences in the SEMTA area – originally OK1035519 granted in September 2004 for 7 vehicles and 2 trailers. He was called to Public Inquiry in July 2006 when the licence was revoked as it had been granted using false bank statements. He had used a transport consultant John Plummeridge to apply for the licence. Mr Allen said that unknown to him Mr Plummeridge had been submitting false applications, with false documents. In 2008, Mr Plummeridge was sentenced to 4 years for his actions. Mr Allen said that Traffic Commissioner Mr Heaps exonerated him of illegal activity and said he could re-apply for a licence which would be granted. He was granted a new licence in September 2006 (OK1062127). He then incorporated and applied for a licence in the company's name – the current OK1122186.
26. He built up his business and is contracted by many large companies to work on infrastructure projects. Most of the time the vehicles are on sites and cover low mileages – he estimated 113 miles per day.
27. The drivers work transporting stone from on-site quarries and assist on site haulage work. They otherwise wait in their cabs for instruction. There are 47 employees, 29 office based or plant operatives, with 18 drivers based in Aberdeen. The drivers are self-employed paid through an agency called The Guild Ltd. He thought he could pay them that way as they were on a construction site; that is what The Guild told him.
28. Paul Shea was an external transport adviser to him. As transport manager he relied on Paul Shea's assistance. After receiving TLS's report he no longer uses him. He had trusted him.
29. They no longer use the Eastfield or Dyce operating centres, only that at Newmachar which has capacity for 30 vehicles. The company has purchased 6 acres in Aberdeen for long term operating. The Newmachar site was granted subject to a condition. They applied for a greater authorisation to 17 vehicles and 2 trailers. There was correspondence with the Office of the Traffic Commissioner regarding the condition on the licence and photographs were provided. The Office of the Traffic Commissioner contacted Aberdeenshire Council. The re-alignment work to the A947 was completed some 2 weeks before and the access track resurfaced as requested by the Council. Another issue with the Council was access being blocked by tailbacks. A solution of a boxed junction was made and the company and other operators agreed to meet the costs. If an increase in authorisation was granted, the company would ensure implementation of the box junction within 2 months, with evidence of that provided to the Traffic Commissioner and the Council.

30. The company started work on the AWPR (Aberdeen by-pass) site in April 2015, a site 48 miles long. Multiple delays have occurred which has caused pressure to have more vehicles on site. In April 2015, they took on extra work for Balfour Beatty which was greater than the OM licence authorised. They thought this peak of work would last a few months and used OK licence vehicles up in Scotland. They intended this to be temporary but the need for more vehicles continued and in April 2017 an application was made for more vehicles (from 12 to 17). He accepted that they have operated OK vehicles permanently from the Newmachar site and exceeded the vehicle authority on the OM licence. For the last 3 years no vehicles have operated from the OK operating centre in London.
31. Most vehicles are operated on the bypass site but some specified on the OM licence can be used for transport work not related to the site. The only time a vehicle which is not specified would leave the site would be to come back to the Newmachar operating site for its 6 weekly check. He said in his statement that until 2 weeks previously vehicles did not need to use a public road to get back to the Newmachar site as there was no public highway between the two. As of 2 weeks ago there is a small section of the public highway between the AWPR site and the operating centre. In future a non specified vehicle will be brought back on one of their low loader vehicles. Vehicles do not need to leave the site for re-fuelling as they can be fuelled on site.
32. They also sub-contract work – list of sub-contractors produced. There is no more availability of sub-contractors in the area.
33. The vehicle FJ06 JZX stopped by the Traffic Examiner on 11 April 2017 was unladen but bore a licence disc even though it was not specified on the OM licence. The vehicle was on permanent on site work as of 17 September 2016 and was removed from the licence. Mr Coyle was not authorised to be on the public highway. He had been working on the Blackdog roundabout section of the site and going to B & Q at Blackdog for a cup of tea and sandwich. Blackdog is a short distance from Balmedie which the Traffic Examiner put as the destination. Staff were told which vehicles can leave the site and which not. The tachograph charts were there as drivers are told to record their time whether on site or not. He accepted charts should have been collected and analysed. This vehicle is their only analogue vehicle and is now off road and being sold. The remaining fleet is all digital.
34. After the Preliminary Hearing on 26 January 2018 they sold 3 older vehicles on the OM licence:-
BX07 OHR;
BX07 OHP;
MX57 LVD.
35. They then removed from the OM licence vehicles which could be permanently on site and not specified:-
M57 EVU;
KX05 BAA;
MX57 EVP.
36. They transferred EO15 SFZ and LT08 NTX to the OK licence as these vehicles needed to be on the public highway.
37. They specified 7 vehicles from the OK licence to the Scottish licence being:-
EU66 XBR;
EU63 FDV;
EU63 FDP;
EU17 VBG;
EU16 GGZ;
EU16 GGY;
EU14 KUJ.

38. They had a vehicle which had not been specified, as permanently on the site, and put it on OM – that was - EU17 VBF.
39. EY64 BWZ was taken off OK and placed permanently on site.
40. CU11 AAN was removed from OK 3 days before the Preliminary Hearing and placed on permanent site work.
41. 3 vehicles out of 9 remained specified on the OK licence. Their solicitors visited on 20 March 2018 and told them they were in breach of their licence and that day the 3 vehicles were taken off OK. EO15 SGZ was put on OM and the other 2 were put on permanent site work.
42. They still needed a further 5 vehicles on the licence to help meet the needs of the contract.
43. He had used Paul Shea's transport consultancy for 10 years in relation to his company's operator licences. He had relied on him. On the recommendation of his solicitor he has used TLS to audit the company's systems. They have impressed him and he is working with them on improvements. They will attend every 6 weeks to make sure their recommendations are implemented. He is assisted at Newmachar by a long standing employee, Mr Breslin, who acts as Transport Co-ordinator and is a mechanic. Another employee, Ms Docherty, will have the opportunity to qualify as a transport manager.
44. The Newmachar site has a testing pit and tools and vehicles and trailers are inspected by employee Mr McFadden. They recently purchased a Bowman brake tester which will be used at the 6 weekly inspections. He acknowledged that vehicles had failed at MOT but countered that his instructions to garages had been to prepare and repair, with a view to first time pass. He produced evidence in form of W J Brown invoices, Scania and Norscot documentation. Given his dissatisfaction, in particular with W J Brown, he instructed Mr McFadden to undertake pre-MOT inspections and of the subsequent 6 tests all passed first time
45. Drivers do complete daily defect reports and notify Mr Breslin of any defects. Mr Breslin and Ms Docherty maintain the vehicle records. He, Mr Breslin and Ms Docherty, will attend refresher courses.

TLS evidence

46. The evidence from Messrs Collins and Lever, both former road police officers who now trade as Traffic Law Solutions, was produced through their 58 page report and brief oral evidence. I have had regard to all of that report, including helpful photographs, and do not rehearse the full contents. I have taken the following from their report and oral evidence.
47. The operating centre premises at Newmachar has ample room for the operator's vehicles and plant and other companies which use the site. The recent upgrading of access to the A947 is satisfactory. The old access road or track is no longer used (photograph).
48. The operator's office is modern and well equipped. There are said to be 18 drivers and 14 other staff. The operator uses on line services and belongs to some trade associations. The operator's work is plant hire but drivers only do driving work and the associated loading and unloading. The work is not "domestic" but fully regulated by EC Drivers Hours Regulations. No work falls under emergency exemptions. A significant proportion of the daily mileage is on site.
49. Mr Michael Breslin (supposedly CPC qualified but certificate not located) assists with day to day running of the transport as Transport Co-ordinator. He is assisted by Laura Docherty who aspires to be a qualified transport manager who also does some driving and who

downloads vehicle units, driver cards, driver licence checks, and DDRs. There is a manager in the transport office, Ms Milner, and a finance officer in London. There is a full time HGV mechanic Mr McFadden in the workshop and another full timer who assists in the workshop and, in particular, with the washing and steaming of vehicles.

50. The operator had Mr Paul Shea as transport consultant based at the operator's London office. He collates driver and vehicle data and produces infringement reports (using Storeridge Optac 3) and deals with other operator licence issues. Mr Allen appeared to the consultants as having the experience required for a transport manager. He also has LGV driving entitlement and driver CPC training.
51. The Guide to Maintaining Roadworthiness, the Senior Traffic Commissioner (STC) Statutory Documents and the DVSA Guide to Drivers Hours Regulations were evident in the transport office. There were channels for communicating with drivers. TLS showed Ms Docherty how to access the Optac 3 data. TLS showed the operator how to access further reports from that data.
52. In respect of maintenance, the test pass rate had been below the national average and a concern. The vehicles and trailers are safety inspected on site by the operator. The last 6 tests have been first time passes. The workshop facilities are modern. A good supply of tyres is kept. The operator has a well equipped service van to respond to mechanical issues on road or on site. A wall planner is 13 months in advance. Each vehicle and trailer has its own folder and similarly with drivers. The PMI reports are of industry standard. The 6 week interval is met.
53. However, on examination of the PMI sheets for the last 12 months, TLC could not find any evidence of brake testing either by a mechanical decelerometer or roller brake tester. The only brake testing was at time of annual test.
54. Mechanic Mr McFadden told TLS he did strip the brakes at every PMI and did a road test, however this was not recorded. The tippers are special order with disc brakes all round, not mixture of discs and drums. The operator has since purchased a new Bowmonk brake testing device. All vehicles will be brake tested using this, with copy digital print readings attached to the PMI sheets.
55. DDR reporting was in nil defect duplicate book style. These are kept indefinitely. TLS advised that the books be kept in cab, with top copy handed in daily. There were very few defects recorded – this may have been because drivers could easily report to the workshop and mechanic Mr McFadden checked the fleet every night. However, PMIs revealed defects which drivers should have identified. TLS recommended gate checks to audit the drivers.
56. In respect of drivers' hours and tachographs, the operator used Paul Shea based in London at an office provided by the operator. Mr Shea uses Optac 3 web based. Both licences [OM & OK] were set up as a single depot on the Optac system – "in effect this merged ALL the data for both licences"
57. The combined active fleet as at 12 March 2018 was 15 specified operational vehicles – 12 Scottish, 3 London. EU17 VDK was classed as plant, was fitted with digital recording equipment and downloaded to Optac. FJ06 JZX was analogue and not on Optac.
58. TLS noted the considerable amendment on or around 26 January 2018 [the day of the Preliminary Hearing].
59. Of the 12 specified vehicles 11 were tippers, 4 were articulated units (one a Beavertail). The combined licences' authorisation was 22. An interrogation of Optac between 1/11/17 – 30/1/18 showed 20 vehicles. FX06 JZX (OM – analogue) and CU11 AAN (OK) were not on Optac. At time of the TLS audit, CU11 AAN was added in.

60. Leaving aside CU11 AAN and analogue FX06 JZX, the audit of Optac found 55 drivers in this period of 1/11/17 – 30/1/18 but only 46 in the Optac driver card downloads. Of these, 9 drivers whose cards had not been downloaded, 7 drove on single days and 2 on two days. Some other driver cards were not downloaded. The 9 drivers did not appear to have worked for the operator after 15 December 2017. These 9 did not have their driver cards downloaded either at appointment or termination. The operator advised that the majority of drivers lived in Scotland or Eire – none from London.
61. 9 full time drivers are non UK licence holders – 3 Polish and 6 Eire – none of these had registered with DVLA. This began to be done on 13 March 2018.
62. In respect of vehicle unit downloads all were within 90 days with some within 28 days. The download was set to “data since last point of download”. This did not serve to allow frequent analysis of driving “off card”. TLS recommended changing to downloading at least every 28 days. This was implemented immediately.
63. For driver cards only 77% were downloaded within the legal 28 days. Bad weather from 15 December 2017 stopped work early for Christmas and drivers dispersed and not all cards were downloaded prior to drivers going away and not returning until mid January. That explanation takes the figure to 82.8%. The percentage figure for driver card downloads is unacceptable and should be at 100% unless something exceptional affected the driver.
64. The process used by the operator and Paul Shea was convoluted. Digifobs were sent to Mr Shea recorded delivery. Mr Shea then prepared reports to take with him to Aberdeen – monthly but with missed visits. TLS implemented a digital solution to remove the postal stage and also showed Ms Docherty how to download. She now aims to download driver cards at 14 days and vehicle units at 28 days maximum. TLS found that unbeknown to the operator, though paying for it, there was remote downloading of the vehicle units to Scania’s portal. Until the TLS audit and TLS intervention, the Optac analysis was only available to Mr Shea in London. No one in Aberdeen could use it as a tool.
65. The TLS report then considered what reporting was provided by Mr Shea. They found he has a single Optac account used for all of his customers as if one giant operation and each customer a depot. TLS found Working Time Directive breaches in respect of breaks; which could have been mode switch issues. The rate of offending was very low.
66. TLS undertook a drivers’ hours infringement analysis for 1/11/17 – 31/1/18. There were no scanning of analogue charts nor checking by eye, nor assessment of any mixed driving. There were missing charts. (TLS adopted the DVSA Earned Recognition guidelines). The level of offending was low. However, they identified for the operator where offending was occurring and how to get to zero. There were 10 infringements (described in the report).
67. Mr Allen himself committed a daily rest offence bringing back a vehicle from Eire. He explained this as arising from heavy snow but had not declared that at the time. TLS have advised the operator to advise drivers to correctly report matters of an unexpected and exceptional nature. In general, TLS found planning and scheduling effective.
68. There were 21 incidents of unknown driver movements over 2kms. TLS went through all these incidents in detail with the operator and Mr Shea. Some of these can be attributed to operators/drivers perception of in and out of scope driving, especially with tipper work on sites. This can cause significant compliance issues. Mr Allen has stated that his drivers will conform to EC561/2006 under all circumstances. TLS assumed that some of the tipper drivers have run off the card because others did (the school boy dare as they termed it). TLS investigated and did not detect commercial or operational benefit to the operator from the omissions by drivers. What concerned TLS was that these unknown driver movements had not been investigated by the operator. They found one instance of 256kms not recorded; another of 113kms; another of 169kms – none of these were investigated.

69. The operator did not know what a placement journey was or of differences between duty time and driving time.
70. Of 89 digital records examined, only 53 showed a walk round check of 10 minutes or more. From the digital vehicles covered by Optac in 2017 – 896,173kms were recorded, with 4797 daily deployments – an average daily mileage of 113 miles. The Aberdeen by pass is about 39 miles long, with one entrance within several hundred metres of the operator's depot.

Closing submissions

71. For the operator, Mr Bowyer submitted (with interventions from Mr Allen in relation to vehicles) that the operator had been frank. It was recognised that the Traffic Commissioner had concerns in relation to unfair commercial advantage. He cited the *Bryan Haulage (No.2) T/2002/217* and *Priority Freight T2009/225*. Mr Allen is impeccably honest, he has a competent team now given that he is rid of Mr Shea. In terms of trust, the operator will be overseen by TLS paying a regular compliance visit.
72. Should the operator be closed down in terms of the *Bryan Haulage* question? In terms of proportionality, this was not a case for removing the licence. Mr Allen is the sole director and sole transport manager so this is not a situation of getting rid of him. Another transport manager could be brought in. The facts are as they are and Mr Allen has tried to fix them. If necessary, he can step down as transport manager. He is willing to be overseen. He has shown compliance with maintenance and drivers' hours. He employs good people such as Mr McFadden who goes the extra mile. Other staff, such as Ms Docherty, are being trained.
73. He would be willing to surrender the SEMTA licence and not apply for another for a year if that would satisfy regulatory action. He would like to be a Scottish operator. He had 23 vehicles in Aberdeenshire – 3 have been sold and one is for sale. That leaves 19 vehicles, with an authorisation of 12. 7 vehicles are on sites. He wanted to be left with 14 modern vehicles and 2 new ones which he has ordered, making 16. He would sell everything older than the 63 registration. It was Mr Allen's intention to stay in Aberdeen where he has purchased a house.

Consideration of the evidence and my decision

74. I have had regard, in particular, to the following case law:

Bryan Haulage (No.2) T/2002/217;

Priority Freight T/2009/225;

Thomas Muir (1999 SLT666) decision of the Court of Session (integrity of licensing regime).

Alistair Walter [2017] UK UT 55 (divisibility of repute)

Martin Joseph Formby T/2012/34 (trust)

Vision Travel International T/2013/08 (conduct of director)

I have also referred to the Senior Traffic Commissioner's Statutory Guidance documents and, in particular, Nos. 5 and 10.

Goods Vehicles (Licensing of Operators) Act 1995.

75. The obligation to hold an operator's licence derives from section 2 of the 1995 Act which, subject to exceptions, provides that no person shall use a goods vehicle on a road for the carriage of goods (a) for hire or reward, or (b) for or in connection with any trade or business carried on by him. Road is defined in section 58 as in relation to Scotland the same meaning as in the Roads (Scotland) Act 1984 that is any way (other than waterway) over which there is a public right of passage and includes the road verge, any bridge or tunnel.
76. Section 5 sets out which vehicles are authorised to be used under the licence. Section 5(4) provides that "An operator's licence shall not authorise the use of any vehicle unless the place which is for the time being its operating centre – (a) is in the area of the traffic commissioner by whom the licence is used; or (b) is outside that area but has not been the operating centre of that vehicle for a period of more than three months". Sub-section (5) serves to prevent successive periods of three months. Sub-section (6) provides for the specification of vehicles on licences.
77. Section 6 provides that an operator's licence shall specify vehicles and trailers.
78. Section 7(1) provides that "A person may not use a place in the area of any traffic commissioner as an operating centre for vehicles authorised to be used under any operator's licence issued to him by that commissioner unless that place is specified as an operating centre of his in that licence". Sub-section (3) defines "operating centre" in relation to any vehicle as "the base or centre at which the vehicle is normally kept, and references to an operating centre of the holder of an operator's licence are references to any place which is an operating centre for vehicles used under that licence."
79. Section 8 of the Act serves to require an operator's licence for each area in which the operator will have an operating centre or centres. An operator may hold separate operators' licences in respect of different areas.
80. Sections 11 and 12 provide for the publication of applications for licences and rights of objection and representation, including by local authority. Other sections relate to the use of operating centres, environmental representations and securing road safety.

Findings in Fact

81. In early 2014, operator licences were granted to Allen Transport respectively in the South East and Metropolitan Traffic Area (SEMTA) and in Scotland, the Scottish Traffic Area.
82. Allen Transport gained work on the Aberdeen Western Peripheral Route (AWPR), a major road infrastructure site, and its substantive work moved from the London area to Aberdeenshire. The authorisation on the Scottish licence of 12 vehicles was fully utilised. Applications to vary the licence by use of a new operating centre in 2016 and to increase authorisation in 2017 received objections from Aberdeenshire Council on road safety grounds.
83. From sometime in 2015, Allen Transport started to use vehicles specified on the SEMTA licence to work continuously on the AWPR contract. The London operating centre ceased to be the place where the SEMTA vehicles were normally kept. Maintenance and presentation for annual tests took place in Scotland.
84. Allen Transport is in material breach of the SEMTA licence in that the vehicles specified thereon were operated outwith SEMTA from sometime in 2015 which continued until vehicles were fully removed from the SEMTA licence on 20 March 2018.

85. From sometime in 2015, Allen Transport has operated goods vehicles in Scotland in excess of the authorisation specified on the licence granted on 14 January 2014. On balance of probabilities I find that such excessive use has been to the extent of a minimum of 12 vehicles, including vehicles specified on the SEMTA licence. Such excess use did not reduce until sometime after the call to Public Inquiry.
86. Mr Allen as director and transport manager was not remote and was directly engaged in the leadership and management of Allen Transport's operations on the AWPR contract. He became Aberdeen based, albeit with visits to London and Ireland. He knew that SEMTA vehicles were being operated in Scotland. No one other than him was responsible for the deployment of such vehicle resource to Aberdeenshire. He was and is in command. He is not new to operator licensing having held an operator's licence since 2004. He is sole director. No one else controlled Allen Transport.
87. Allen Transport applied to increase the authorisation in Aberdeenshire by the addition of 5 vehicles. This was not done for the purpose of removing the SEMTA vehicles from operating in Scotland but to gain an even greater overall vehicle authorisation to off-set sub-contracting and to gain greater work on the AWPR and associated projects.
88. The operator's transport consultant Paul Shea was aware that SEMTA vehicles were operating in Scotland.
89. The objections of Aberdeenshire Council to the operator's operating centre variation applications required agreement to widen access and contribute to road safety and signage measures. The operating centre at Newmachar would be a suitable operating centre for an increased level of authorisation.
90. The operator has demonstrated financial standing to the level of authorisation on the SEMTA and Scottish licences as now or if increased to 17 vehicles in Scotland.
91. The operator has not had a 100% pass rate at annual test and vehicles have attracted prohibitions. The operator could not demonstrate that vehicles subject to in-house maintenance and repair were brake tested to the good practice standards of the DVSA Guide to Maintaining Roadworthiness. Driver daily walk round checks needed improvement. Very recent test presentations have passed first time.
92. The operator requires drivers to keep records of their driving and duty time in line with the EC drivers' hours rules but monitoring of such was deficient and infringements were not analysed in a timely and consistent manner. The arrangement with Mr Paul Shea was peculiar and flawed. The instances of missing mileage and infringements were not serious – no MSIs.
93. The operator does not deduct PAYE or NI from his drivers' wages.
94. The operator's drivers who did not have UK driving licences were not registered with DVLA.
95. Allen Transport Ltd most likely would not have come to my attention in a material way but for the objections by Aberdeenshire Council to variation applications and the happenstance of a Traffic Examiner encountering one of the operator's vehicles displaying a disc for a vehicle which had been de-specified. DVSA has not had the local resource to follow up that encounter but it concerned me and I decided to see the operator at a preliminary hearing for I was not going to grant any variation application to increase an operator's authorisation when there had been this adverse encounter. At face value, non-compliance cannot be rewarded with an increase in authorisation.

96. As noted earlier in this decision, I then ‘stumbled’ on Allen Transport’s use of goods vehicles in Scotland well in excess of the authorisation on their Scottish licence and indeed in excess of the authorisation which that variation application would have delivered. The means by which they achieved this and achieved their presence doing so much work for the AWPR construction was through cover of the SEMTA licence. This was not incidental behaviour or the ignorant act of, say a traffic controller, lower in the management line of responsibility but the act of the director transport manager. I cannot find it to be oversight. I find it to be deliberate to have the SEMTA licence (as the company still has a base in SEMTA, with a finance officer there and Mr Shea until very recently there) in hand and to put it to use for the very attractive work on the AWPR. The degree of work available on the AWPR and holding another licence for 12 vehicles was an irresistible temptation for Mr Allen. Allen Transport had an excess of work on the AWPR. It suited him to use his SEMTA licence in Scotland and to avoid any difficulties which a Scottish variation application might (and indeed did) throw up.
97. The matter of discs is an interesting point. There was interchange of vehicles between the SEMTA and Scottish licences. Mr Allen claimed that many vehicles were ‘site’ vehicles and did not go on the road but were able to access the AWPR site direct from the current operating centre. He claimed that his operation now would have vehicles which were site only and thus the forward planner could show vehicles in excess of the Scottish specified ‘12’. He had to concede to me that some purported site only vehicles had to use the road to get between site and operating centre. Short of DVSA having a presence at the operating centre I wondered out loud how there could be any reassurance that the ‘site’ vehicles would not be operated on the road. All vehicles have to come back to the operating centre for their PMIs or other than mobile unit maintenance. I was told this would be by low loader and it was suggested in discussion in the latter stages of the Inquiry that photographs could be taken. That the discussion descended into such serves to illustrate how trust comes into my decision in this case.
98. In a case such as this I have to undertake a balancing act of positives and negatives. The positives could be said to be:
- (a) first time for this entity at Public Inquiry;
 - (b) ability to show financial standing for the overall number of vehicles used;
 - (c) the annual test rate was improving and past failures had elements of being let down by contractors;
 - (d) the prohibition rate is not high; there are no prohibitions of an aggravated nature;
 - (e) agreement to road alignment and adjustments requested by Aberdeenshire Council to make the operating centre suitable;
 - (f) the instruction to TLS to undertake a full audit and report thereon and the disclosure of that report and implementation of recommendations (e.g. in relation to driver licences; brake testing);
 - (g) the intention to retain the services of TLS;
 - (h) the long standing practice of recording of drivers’ duty time and hours on tachographs even if solely on site;
 - (i) the nature of the infringements found were at the lower end of the scale and, for most part, missing mileage was readily explained;
 - (j) modern office and facilities and modern computer equipment.

99. I have to decide whether these positive features can counterbalance the adverse matters which brought this case to my gaze. Of particular concern is that the sole director is the transport manager and a transport manager has to know the fundamentals of operator licensing. Operator licensing in Great Britain is area based. It has been area based in all the time of the 1995 Act and in all of Mr Allen's time as an operator (in whatever entity). He cannot claim ignorance of the area basis for in late 2013 he, through the company, applied for 2 operator licences – one in SEMTA; and one in Scotland – with all associated nomination of and advertising of operating centres. By operating as he has done, Mr Allen has disregarded a fundamental. I cannot excuse that. In the balancing exercise I have to give weight to the integrity and purposes of the regulatory regime (I have the Court of Session case of Thomas Muir very much in mind) and to fair competition for he has abused fair competition.
100. I pause here to comment on the role of Mr Paul Shea whom Mr Allen used as a transport consultant over many years in London and in Aberdeenshire. Mr Allen's evidence was of relying on Mr Shea. The TLS audit exposed much that was not right within this operation and at least two peculiarities of Mr Shea's way of working – the posting of data and the aggregation of his clients. This was not regular disciplined analysis and analogue records were not analysed. I have to wonder if much of the use of Mr Shea was to create what I term a 'veneer' of compliance – enough to keep enforcement agencies at bay but with a lack of overall integrity. Had there been integrity in the SEMTA licence then discs would not have been used as they have been and vehicles would not have been specified as they have been. Mr Allen did not choose well historically in the company he kept and I wonder that in his association with Mr Shea he had found a convenient lieutenant in terms of approach and attitude – all a bit 'wide'.
101. It is difficult to find that a transport manager has repute if he uses an out of area licence as happened here. I have to consider if a finding of loss of good repute would constitute a disproportionate response in Mr Allen's case (Article 6, paragraph 2(a) of EC1071/2009). If I find against his repute as a transport manager, consequences for the operator licence follow for he is sole director and loss of his repute then imperils the licence. In my considerations, I have had regard to the recent case of *Alistair Walter T/2017/55* (one well known to Mr Bowyer for he represented Mr Walter). At paragraph 23 the Tribunal (HH J Beech) stated "It is clear from the DTC's decision, that she felt able to compartmentalise the issue of good repute as an operator and the issue of good repute as a transport manager in Mr Walter's case. It is questionable whether such an approach is feasible or appropriate when considering an individual in Mr Walter's situation and if it is feasible or appropriate, the DTC did not set out the reasons for such a proposition in her judgment. It was Mr Walter as operator who signed the application for an operator's licence and in doing so, gave the eleven standard undertakings which are designed to ensure that vehicles are kept fit and serviceable, that records are kept, the rules on drivers' hours and tachographs are observed, that the operation of vehicles remain within the law (amongst other requirements).....It was Mr Walter as transport manager who made a declaration on his TM1 nomination form.....In the circumstances of this case and in the absence of any detailed reasons for doing so, we cannot evaluate the DTC's reasoning or approach when determining that Mr Walter had lost his good repute as a transport manager but not as operator and vice-versa". At paragraph 24, the Tribunal gave the reminder that "having found that Mr Walter had lost his good repute as a transport manager, she was required to disqualify him in that capacity, which she did not do".
102. My own decision making over the years, especially since EC1071/2009 enhanced the status and obligations on a transport manager, has been that I have not yet found it possible to see repute as divisible when the same human person is the controlling and sole director as well as transport manager and where the breaches of the licence undertakings or other information relevant to fitness to hold an operator licence is of such a nature as to raise the question – can this person retain their repute? The questions and issues interweave: can I trust this person; do I have to put this person's business out of business; is loss of repute a disproportionate response?

103. Trust is at the heart of operator licensing – as underscored by much of the case law including *Martin Joseph Formby*. I have to consider if I can trust Mr Allen in future (I pause here to put beyond doubt that I know the operator is a limited company but in relation to trust, the human agent is the relevant focus). He has shown himself to be untrustworthy with the SEMTA licence by using it furth of that area and over a sustained period of time which would have continued but for the Preliminary Hearing and this Inquiry. He is desperate to use more vehicles in Aberdeenshire; he is under commercial pressure and commercial opportunity (none of these bad in themselves) to use more vehicles. I have reflected a great deal on this question of trust for my answer cannot be subjective but reasoned. It can, however, draw on my impression of Mr Allen at the hearing. He will comply if he is under scrutiny. That is different from complying because it is the right course of action. He was hesitant in some of his answers to me about the degree to which excess vehicles were or would go on the public road. I do not believe I can trust him, not least because he knows how difficult it would be to enforce operation at the level of the licence authorisation and given his history since 2015.
104. I now pose the *Bryan Haulage* question. Do I have to put this operator out of business and my answer is that I do. I cannot have an operator/transport manager who thinks it acceptable to act as this operator did. The purposes of operator licensing and integrity need to be guarded and in this case in terms of Statutory Document 10, Annex 3, I consider this to be a severe case involving a severe and fundamental breach of trust. I cannot see a way round revocation of both licences. Not to revoke would send a very odd message to all those operators who dutifully respect the area fundamental of operator licensing. Thus, I have not been able to craft an outcome limited to curtailment or suspension. I cannot separate Mr Allen and the company. Mr Allen's conduct is effecting that of the company.
105. In other cases, the positives which I have identified would be very persuasive and I would have given much weight to them. I do not find that all is bad in this operation. There are positive features as I have identified but the balancing act does not favour them given the fundamental negatives on the other and my reservations. I know that a decision to revoke will have serious consequences for Allen Transport and for some employees. Others will find alternative work without difficulty. Regulatory action does hurt.
106. I find that Allen Transport Ltd and director Mr Daniel Allen are no longer of good repute. The operator licences held by Allen Transport in SEMTA and Scotland will be revoked on grounds of loss of repute, loss of professional competence (see below in relation to the transport manager), breach of licence undertakings and material change. The revocation of the SEMTA licence will be of immediate effect (no vehicles are specified thereon now). The revocation of the Scottish licence will be with effect from 23:59 on 30 May 2018.
107. Having revoked this licence I now consider whether I should use my power of disqualification and I have decided that I should do so. I have to decide what period that should be. In this I have guidance from the case law *C G Cargo and Sukhwinder Singh Sandhu T2014/41* and Statutory Document No.10. The period for which there was the fundamental breach was over 2 years, that is from sometime in 2015 and up to 2018. I consider it proper that there be a period of disqualification which serves to re-calibrate fair competition and respect for the regulatory regime but which is not draconian and which does recognise the impact which revocation will have on this particular business and that there were some positive features. The period will be TWO YEARS (2 years) with effect from 23:59 on 30 May 2018. The disqualification applies to the company and to Mr Allen – there is no basis for fixing a different period – and will apply in all traffic areas of Great Britain.
108. In respect of Mr Allen's repute as a transport manager, that is lost, that being a proportionate outcome. He has not proved trustworthy in his duties for this licence. He cannot be trusted with the licence of any other legal entity. I have to disqualify him and will do so for the same 2 years. He is an intelligent man, not lacking in knowledge or ability. It

was attitude and false priorities which have led to his downfall in this case. I do not order any rehabilitative measures.

Summary of my decisions

109. The operator licences (OM1125842 and OK1122186) held by Allen Transport Ltd will be revoked in terms of sections 26 and 27 of the 1995 Act. The revocation of OK1122186 will be of immediate effect.
110. Allen Transport Ltd and Mr Daniel Allen are no longer of good repute and will be disqualified for TWO YEARS (2 years) from applying or holding an operator's licence in this or any other traffic area in terms of section 28(1) and 28(4) of the 1995 Act will apply, that is if the disqualified person:
 - (a) is a director of, or holds a controlling interest in-
 - (i) a company which holds a licence of the kind to which the order in question applies, or
 - (ii) a company of which such a company is a subsidiary, or
 - (b) operates any goods vehicles in partnership with a person who holds such a licence, that licence of that company, or, as the case may be, of that person, shall be liable to revocation, suspension or curtailment under section 26.
111. Mr Daniel Allen is no longer of good repute as a transport manager and he is disqualified in terms of Schedule 3 of the 1995 Act.
112. The order of revocation of OM1125842 and the three aforesaid disqualification orders will be effective from 23:59 on 30 May 2018.

Joan N Aitken
Traffic Commissioner for Scotland
Deputy Traffic Commissioner for England and Wales

2 May 2018