

TRAFFIC COMMISSIONER FOR SCOTLAND

GOODS VEHICLES (LICENSING OF OPERATORS) ACT 1995

MGS CIVIL ENGINEERING LTD – OM1148318

PUBLIC INQUIRY HELD AT ABERDEEN ON 11 MAY 2018

DECISION OF THE TRAFFIC COMMISSIONER

Background

1. MGS Civil Engineering Ltd (Scottish Companies House SC485272) (hereinafter “MGS”) was incorporated on 28 August 2014. The registered address is Loch Hills Farm, Dyce, AB21 7AS. The sole director is Mark Gill (b.1980). Mr Gill’s address at Companies House is in Glenely, County Donegal and he is an Irish businessman. He also has an address in Widnes.
2. By application dated 24 September 2016, MGS applied for a restricted goods vehicle operator licence in Scotland, with authority for 10 vehicles and 2 trailers. That application OM1148318 was granted for a restricted licence for 6 vehicles and 1 trailer following a Preliminary Hearing in the North East Traffic Area. MGS has a licensing history in other parts of Great Britain. An application OC1133968 was refused. A licence OC1139039 was revoked. An application OM1147572 was withdrawn.
3. The current correspondence address for the licence is Bridgehaugh Industrial Estate, Off A947, Newmachar, Aberdeen, AB21 7NY. The operating centres for the licence are that Bridgehaugh address and Loch Hills Farm, Dyce. At time of application for this licence, Loch Hills Farm was given not only as the operating centre but also as the place where MGS would undertake its in-house maintenance. It was indicated that there was a workshop at Loch Hills Farm.
4. The maintenance providers were MGS in-house and Mark Wright Plant and Commercial Services of Kintore at 8 weekly intervals.
5. On 27 October 2017, MGS was at Public Inquiry before me in Aberdeen. I suspended MGS’s licence with effect from 23:59 on Friday 3 November 2017 in terms of section 26 of the 1995 Act as I was not satisfied as to fitness and proper arrangements for meeting the licence undertakings especially in relation to vehicle roadworthiness. The licence conditions and undertakings had been breached and false information given to the Office of the Traffic Commissioner at time of application. The suspension was for a minimum of 8 weeks. For the suspension to be lifted the operator would have to provide satisfactory evidence of arrangements for meeting the licence undertakings and being a compliant operation. It would be for the operator, with assistance of his transport adviser (Mr Paul Shea) as he thinks needed, to make such arrangements and provide evidence to the Office of the Traffic Commissioner at Edinburgh.
6. During the period of suspension, the 4 vehicles specified on the licence could not be used on this or any other licence and must remain parked up in terms of section 26(6) of the 1995 Act. The 4 discs must be returned to the Office of the Traffic Commissioner Edinburgh without delay. I allowed the operator during the period of suspension to nominate an alternative operating centre.
7. On 4 January 2018, an application was made to add Bridgehaugh Industrial Estate to the licence. There was contact between the Leeds Office and Mr Shea and thus the correspondence address for the licence changed to Bridgehaugh Industrial Estate, Newmachar, Aberdeen, AB21 7NY.

8. This Public Inquiry was convened for it appeared that the operator did not comply with my order of suspension. The discs for the suspended vehicles were not returned to Edinburgh. DVSA could not retrieve these discs from the operator. Further, DVSA submitted an adverse report to my Office as it appeared that the operator had not respected my suspension order. I therefore directed that the operator be called back to a Public Inquiry.
9. The Public Inquiry was called for 11 May 2018 at Aberdeen. The call up letter, dated 6 April 2018, and brief of papers were sent to the operator at the updated correspondence address of Bridgehaugh Industrial Estate.
10. The vehicles currently specified to this licence were all specified during 2017 and are
NX06 HTT
SN08 EDR
SN55 BCY
KX05 LSU
11. The Public Inquiry brief *inter alia* included a report from DVSA Vehicle Examiner Mr Moir; his original report dated 30 August 2017; and a transcript of the 27 October 2017 Public Inquiry. There was no contact by the operator in the period between the call up letter dated 6 April 2018 and the Public Inquiry. No documentation or written submission was submitted in advance.

Public Inquiry – 11 May 2018

12. The Public Inquiry duly convened at Aberdeen on 11 May 2018. Mr Mark Gill was present but unrepresented and unaccompanied. DVSA was represented by Vehicle Examiner Mr R Moir accompanied by colleague Mr H Mackie.
13. Mr Gill confirmed that he had received the Public Inquiry brief. He understood why he had been called to this Inquiry and that MGS's licence remained suspended. He brought some documents to the Inquiry (see below) but no evidence of continuing financial resources. His response to my pointing out that such was required by the call up letter was that Paul Shea never told him. He, Mr Gill, could get such evidence.
14. The call up letter and brief drew attention to the discs for the suspended vehicles not having been returned to Edinburgh. He said he had entrusted the return of the discs to a girl in the office who worked for him and who just posted them. He had no recorded delivery or other evidence of that.

27 October Public Inquiry – a brief summary

15. The transcript of the 27 October 2017 Public Inquiry was in the brief for this current Inquiry. In summary, MGS had been called to the October 2017 Inquiry following an adverse report from DVSA. For completeness, a copy of that report was in the brief for this current Inquiry. The licence was relatively newly granted – in March 2017 for 6 vehicles and 1 trailer. On 12 May 2017, the operator's vehicle KX05 LSU attracted an 'S' marked prohibition at annual test – wheel nuts were loose on 2 wheels and further prohibitable defects for a power steering leak, brake imbalance, excessive wear on the A frame bushes, and headlight aim. Advisories were also given for oil leaks. The vehicle was not displaying a licence disc. When re-presented for test and prohibition clearance, a variation and refusal prohibition was issued for frame ball joint, excessive lift axle 4. This led DVSA Vehicle Examiner Moir to undertake an announced maintenance investigation.
16. The Vehicle Examiner and Mr Gill met on 7 June 2017 at the then sole operating centre at Loch Hills Farm. The Vehicle Examiner found much of concern as he set out in his report

and usual PG13F form which was copied to MGS. Advice was given. Mr Gill arranged for maintenance records to be delivered to DVSA Aberdeen. The Vehicle Examiner's report and associated productions can be referred to for their terms but in essence the Examiner and thereafter myself at the Inquiry could not find that the licence undertakings for vehicle roadworthiness were being met. The operator could not show satisfactory PMIs, DDRs, forward planner or maintenance agreements for the vehicles specified on the licence. Mark Gill was undertaking some PMIs, other were by Mr Hesling in Inverness. The operator responded to the PG13, including a statement from mobile mechanic, Mr Mark Wright, who prepared KX05 LSU for test.

17. As is evident from the transcript of 27 October 2017, Mr Gill attended and had by way of assistance, Mr Paul Shea, transport consultant from London. MGS's work is on the Aberdeen by pass and Mr Shea had been working for other contractors on that site. This was my first encounter with Mr Shea and I took him at face value. Productions, including for finance and in relation to vehicles were lodged on the day. It emerged that Mr Gill was a slow reader but I was told that the Inquiry documents had been read to him. The Vehicle Examiner's report was accepted save in respect of the nature of the forward planner. MGS had their own forward planning systems. Otherwise, Mr Shea said he thought the Vehicle Examiner's report was very fair. Mr Gill is a mechanic by experience, not formal qualification. He had been doing many of the PMIs himself. The Examiner was concerned about torquing procedures.
18. Mr Shea explained that Mr Gill was using Flannery's premises at Bridgehaugh, Newmachar which had a covered workshop and pit and which was being used by other tipper operators on the by-pass. Mr Gill told me he was operating 4 tipper vehicles, doing his own maintenance. He had use of the workshop at Bridgehaugh and had advanced tools; no roller brake testing. He had been too busy to do the maintenance and test preparation on KX05 LSU so, on recommendation of a mate, put it to Mark Wright.
19. During the original Inquiry I became more and more concerned over Mr Gill's arrangements for meeting the licence undertakings. I needed clear evidence to persuade me as to how I could possibly trust MGS/Mr Gill with the retention of the licence.
20. Mr Gill said he was thinking of moving the operating centre to Bridgehaugh; that he did maintain and spend money on the vehicles (invoices produced); that he needed the licence for his jobs; that he could get roller brake testing done; that he had a recent first time pass at annual test; he would do another course beyond the sole day FTA course; he intended to employ a plant manager; he could get someone with a transport manager qualification; he would be willing to get someone else to do the maintenance.
21. After hearing evidence of the operator, Mr Shea and the Vehicle Examiner (who had doubt about the integrity of the PMI reports) and being myself very doubtful of the arrangements in place for meeting the licence undertakings, I held back from revoking the licence – my reasoning is expressed in what I said at the Inquiry. However, I could not let MGS operate without proper arrangements being in place to meet the licence undertakings. I required compliance, not "catch up". I took the decision to suspend and in presence of Messrs Gill (operator director and shareholder), Shea (transport adviser) and Examiner Moir I said, "I will suspend this licence for a minimum period of eight weeks with effect from 23:59 a week today. I am giving you a week to make other arrangements for your haulage. So when the minute hand goes into a week on Saturday morning, your licence, your ability to operate these vehicles has gone. These 4 vehicles cannot be used on any other licence, so they are, effectively grounded. During that period of 8 weeks you will have to work very hard to make arrangements such that you can apply to me to lift that suspension". I required a proper maintenance contractor and proper expertise and help. I indicated that I did not see Mr Gill as being the proper person to inspect and maintain the vehicles; that he was too far stretched; that neither I as Traffic Commissioner nor the Vehicle Examiner trusted him to inspect and maintain vehicles. I allowed a variation application to be made to change the operating centre.

22. I suggested to Mr Gill that maybe he was not suited to being the holder of an operator licence with all the regulation and paperwork and that maybe he should confine himself to what he was good at and consider giving up the licence.
23. I also said that if any vehicle was to be sold my permission would be needed as I had grounded the vehicles. "These vehicles are grounded because I do not want you to take the risk of using them and if you use them during a period of suspension you are in big trouble. That is your fleet grounded, parked up, the vehicles that are specified. If you want to sell any of these vehicles you have to ask my permission. If I do not do it that way there are too many risks for you and for me in the vehicles being used by others who do not have proper authority...or I think that you are trying to get around what I have done to you, and operate, even though you are suspended. Now by doing that [meaning grounding the vehicles] I am actually saving you from a revocation and lengthy disqualification. You see if you get disqualified by me that bounces through the rest of Britain".
24. I asked Mr Gill if he understood and he said he did. A formal decision letter dated 2 November 2017 was sent confirming my decision. [In its original form the caseworker used the words "professional competence" in error as this is a restricted licence. This was corrected but in no way affected my decision to suspend the licence and vehicles]. The formal decision letter included that "During the period of suspension the 4 vehicles specified on the licence cannot be used on this or any other licence and must remain parked up in terms of section 26(6) of the 1995 Act. The 4 discs must be returned to the Office of the Traffic Commissioner in Edinburgh without delay".

DVSA evidence for 11 May 2018

25. MGS came to DVSA's attention following the suspension effective at 23:59 on Friday 3 November 2017. On 13 November 2017, at the request of Police Scotland, Vehicle Examiner Cuthbert attended at Walker Road, Inverness, to inspect NX06 HTT which had been involved in an incident leaving repair premises. There was a police concern over the vehicle condition. A delayed prohibition for a fractured spring was issued. No operator licence disc was in the window and DVSA's database showed the Examiner that the operator licence was suspended. The repairer said the vehicle had been dropped off 10 days before for exhaust repairs. The driver told the police he was about to drive to Aviemore. The driver left before the Examiner attended. The Examiner phoned Mr Gill who said the driver was only moving the vehicle to the main road to recover the vehicle to Aberdeen. The vehicle was not going to be driven to Aberdeen.
26. On 23 November 2017, Vehicle Examiner Moir visited the MGS operating centre at Bridgehaugh with a police officer and another Vehicle Examiner and saw Mr Gill walking round KX05 LSU. The vehicle lights were on indicating a check before use. The officials waited nearby for 25 minutes but KX05 LSU did not leave the operating centre.
27. On 24 November 2017, Police Constable K Ross reported that SN55 BCY driven by Mr Gill left the Allen/Flannery Bridgehaugh Yard at Dyce and was stopped on the access road leading to the A947. Mr Gill claimed to be moving the vehicle for repair and highlighted a defect. Mr Gill confirmed that the vehicle was not meant to have moved and that he was going against the Traffic Commissioner's instructions. He said the tachograph was also defective and presented an analogue chart with date and mileage but nothing else. He could not produce his driving licence, CPC or digital tachograph card. The Police Officer instructed that the vehicle be returned to the yard and parked up.
28. On 27 November 2017, following a request from my Office to uplift licence discs, Vehicle Examiner Moir and colleague attended at Bridgehaugh. None of the suspended 4 vehicles was present. Examiner Moir phoned Mr Gill who said he was in Ireland. He said 2 vehicles were parked in Inverness; SN55 BCY had been taken back to Ireland on a low loader; the

other vehicle at an industrial estate in Dyce, which he described but did not phone back with the post code (as he was requested to do). The Examiners searched the likely locus described by Mr Gill but could not find any of the vehicles. Mr Gill made no mention to Examiner Moir during their phone call that he had instructed anyone in his office to return the discs to Edinburgh or any arrangement which could have been construed as that. Examiner Moir considered that Mr Gill was evasive when asked about the discs and the vehicle whereabouts.

Mr Gill's evidence

29. Mr Gill brought the undernoted productions to the Public Inquiry and I have annotated against the productions the oral evidence given by him in relation to the significance of the evidence to the issues for the Inquiry. He said having an operator licence was important to his business in getting materials to the sites when his plant operatives needed such.
- (a) Maintenance agreement dated 10 May 2018 (i.e. day before the Public Inquiry), with Hesling Repairs Ltd of Braeval, Daviot, Inverness-shire for 6 weekly inspections (no vehicle registrations given) and pro forma Hesling Repairs Ltd PMI sheet. Mr Gill intended to use Hesling who could come to Aberdeenshire too.
 - (b) Undated statement from Andrew Hesling re. NX06 HTT stating that on 28 September 2017 he undertook a repair to the vehicle fuel system. He next saw the vehicle at his workshop in Walker Road, Inverness, on 23 October for loss of power and exhaust blowing. He checked the wiring and repaired a broken wire on 30/31 October. The vehicle was collected on 13 November; was in an incident directly after collection at the entrance to the workshop and has remained with Mr Hesling ever since.
 - (c) Invoice from Hesling Repairs Ltd to MGS for NX06 HTT repairs on 28 September 2017.
 - (d) Carbonised worksheet from Liam Kelly Haulage Ltd of Donegal for 13 November 2017 driver Casper vehicle 161 DL 2213, with load DAF Tipper NX05 HTT to be collected from Inverness to deliver via boat to Donegal and marked job cancelled 13/11/17 10.30am.
 - (e) For SN55 BCY invoice, dated 3 April 2018, from Radial Plant & Precision Ltd of Donegal to MGS for repairs and body and painterwork £3,600.
 - (f) Invoice, dated 24 November 2017, Liam Kelly Haulage Ltd to collect SN55 BCY from Bridgehaugh and deliver to Radial at Donegal.
 - (g) Photocopy of cheque and attached stub, dated 5 May 2018, to Radial for £3,150.
 - (h) Photographs of yellow and black liveried Scania SN55 BCY before and after work at Radial.
 - (i) Fuel card invoices between MGS and NWF for Key Fuels Diesel in the period 17/1/18 to 9/5/18 – produced to show that none of the suspended vehicle registration marks are on the invoices and were not drawing fuel. Vehicles drawing fuel were WV60 UKM; ND59 00J; DIG 1469.
 - (j) Haulage invoices from Fairview Haulage Ltd of Somerset dated 23/1/18 for 2 tippers one day on A9; dated 28/2/18 for 1/2/18 and 8/2/18 tipper on Inverness Link Road and 22/2/18 2 tippers on Aberdeen by-pass; dated 26/3/18 for 2 tippers on Aberdeen by-pass on 26/3/18.

- (k) Euro Auctions of Tyrone Account dated 24/2/18 for sale of items including SN08 EDR.
- (l) Aberdeen Northern Marts statement dated 10/3/18 to sale of Volvo Tipper KX05 LSU.

The suspended vehicles

30. Thus, of the 4 vehicles specified at the date of my suspension order on 3 November 2017:-

NX06 HTT – parked up at Heslings at Walker Road, Inverness but was to have been driven and been moved to County Donegal on 13 November 2017 but for an incident;

SN08 EDR – sold in County Tyrone on 24 February 2018 or thereabouts – Mr Shea asked my Office for the V5;

SN55 BCX – transported to County Donegal on 24 November 2017 or thereabouts and thereafter extensively refurbished and repainted in County Donegal. Police Officers on 24 November 2017 encountered the vehicle driven by Mr Gill;

KX05 LSU – sold at Aberdeen on 10/3/18 or thereabouts;

31. Only in respect of one vehicle was my Office approached relative to the sale of a vehicle.

Consideration of the evidence and my decision

32. Given the patent non-compliance with my suspension order and the paucity of evidence in relation to proper arrangements for the licence undertakings, I made an immediate order of revocation at the end of the Public Inquiry on 11 May 2018 and indicated that I was reserving my decision on disqualification. I now confirm the basis on which I made the order for revocation and set out my reasoning in relation to disqualification.

33. In coming to my decision, I had in mind the Senior Traffic Commissioner's Statutory Guidance Document Nos. 5 and 10 (and especially the Annex) and questions posed by the undernoted case law. As ever I was balancing the positive and negative evidence:

Bryan Haulage (No.2) T/2002/217 (do I have to put this operator out of business question);

Priority Freight T/2009/225 (can I trust this operator in future);

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

Martin Joseph Formby T/2012/34 (trust);

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

Dundee Plant Hire (T2013/47) (use of suspension);

C G Cargo and Sukhwinder Singh Sandhu T2014/41 (disqualification).

34. When MGS/Mr Gill as sole director applied for this licence, a series of undertakings had to be given. Mr Gill was and is well aware of these and indeed of what Traffic Commissioners require as his history shows. This was not his first time at Public Inquiry. My colleague

Commissioners have had their concerns and no doubt it was on basis of assurances given to him that my colleague granted this OM1148318 licence in 2017. Mr Gill gave false information on the application form. He declared that there would be in-house maintenance at a workshop at the operating centre at Loch Hills Farm. The truth of the matter was that there were no such facilities there and that Mr Gill (MGS) did not have the time or proper commitment or engagement with the licence undertakings to put in place robust maintenance arrangements required to the standards expected for the operator licence. These standards are not secret nor are they impossible, far from it, they are met by compliant, diligent, trustworthy operators day in day out and DVSA's long established Guide to Maintaining Roadworthiness aids understanding. Mr Gill had to attend an operator training course which he did with the FTA in June 2017. The annual test prohibition to vehicle KX05 LSU exposed Mr Gill and MSG for what there were – way below par and a risk to road safety.

35. Little about Mr Gill reassured me in October 2017 but, I gave him a chance to put his operation in order whilst at the same time making sure I fulfilled my duties to the public in terms of road safety and to other operators in terms of fair competition, by making the order of suspension of the licence and in grounding the specified vehicles.
36. The discs were not returned to my Office. Mr Gill should have ensured that was done without delay. He should have wanted to impress me with a very diligent adherence to that requirement. Whatever happened to the discs, they were not returned to my Office. Mr Gill says he instructed his female employee to return them. I am disinclined to believe him. When the Vehicle Examiner asked for the discs there was no mention of them being posted to my Office. I find as fact that the discs were not returned.
37. It is very apparent now that Mr Gill had no intention of grounding the 4 vehicles. By some misfortune, only one vehicle can be said to have been grounded albeit not at the operating centre and that is BX06 HTT. That came about through some incident and not Mr Gill's plan. His plan was to slip it back home to Country Donegal.
38. The fuel receipts only tell me that certain fuel cards were not used for the suspended vehicles. I do not know what other fuel supplies MGS can access. The inspection agreement with Heslings in Daviot was dated the day before the Inquiry. Daviot is some distance from Newmachar. Mr Gill had been to an FTA operator licence awareness course in June 2017 but had not been to anything since October 2017.
39. I cannot find him fit to be the holder of a licence. The prohibitions and undertakings have been breached. He did not use the period of suspension to put in place proper arrangements. He did not bring up to date evidence of finance to the Inquiry in terms of the call up letter. The copy bank statements produced in October 2017 showed MGS very easily met the financial resources level for 6 vehicles. However, circumstances and entities change and we need to see finance.
40. Mr Gill's productions did have some apparent candour to them. To try and show me MGS did not use the vehicles during the suspension he produced the documents which showed the vehicles had not been parked up but 2 were moved to Ireland and thus beyond my or DVSA's reach. Mr Gill was aware that he was under the close gaze of DVSA and Police Scotland in November 2017. That close gaze no doubt motivated him to do something else with the vehicles.
41. My suspension order has been breached in letter and in spirit. I was testing whether Mr Gill could be trusted. That means all the requisite trust has gone. MGS and Mr Gill, indivisible for he owns and directs MGS, cannot operate in Scotland. There is not the remotest basis on which I could trust him. As my southern colleagues had found, he simply does not engage properly with operating licensing.

42. This is a case which requires disqualification. MGS/Mr Gill have had many pointers as to what is required of the compliant operator. He has come up to work on these lucrative road building projects in Scotland, has been glad of the contracts and the good work involved in such but he has not been prepared to operate compliantly and lawfully according to the standards of the 1995 Act. His breaching of the suspension orders took him across the line.
43. I regard the breaching of my orders as serious. I regard the breaches of the licence undertakings and the original prohibition to be serious. Trust has gone. I have Guidance from the Senior Traffic Commissioner and from case law such as *C G Cargo*. The period will be 2 years as the very minimum which could be imposed.

Summary of my decision

44. The operator licence held by MGS Civil Engineering Ltd was revoked with immediate effect on 11 May 2018 on grounds of loss of fitness, breaches of the licence undertakings, prohibition, false statement and material change – section 26 applies.
45. MGS Civil Engineering Ltd and its sole director Mark Gill will be disqualified from the date hereof for TWO 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.

Joan N Aitken
Traffic Commissioner for Scotland

18 May 2018