

## **TRAFFIC COMMISSIONER FOR SCOTLAND**

### **PUBLIC PASSENGER VEHICLES ACT 1981**

#### **CARRIE ANN MCKENDRY & TRACY JANE LANDER T/A MCKENDRY COACHES – APPLICATION PM1145578**

#### **PUBLIC INQUIRY HELD AT EDINBURGH ON 10 MAY 2018**

#### **DECISION OF THE TRAFFIC COMMISSIONER**

1. A partnership of Miss Carrie Ann McKendry (b.1982) and Mrs Tracy Jane Lander (formerly McKendry) (b.1965), with a trading name of McKendry Coaches and a contact and operating address of Unit 3, Ramsay Colliery, Engine Road, Loanhead, EH20 9RF applied for a standard national public service vehicle operator licence to operate 5 vehicles. Maintenance was to be in-house at 4 weekly frequency. The nominated transport manager was Mrs Nicola Ann McCallum (b.1968) (formerly McKendry).
2. The application was dated 9 March 2016 and signed by Carrie Ann McKendry. It was received in the Central Licensing Office at Leeds on 10 May 2016. The application form disclosed a link to PM1032735, an operator licence held by Ann Aitken Watson McKendry. The email address was in name of d mckendry. A landlord's permission letter was submitted. The TM1 form presented Mrs McCallum as an internal transport manager who would work 20 hours per week and disclosed a link to PM1032735. Financial standing was submitted through bank statements in name of Mrs Lander; statements from another bank account; letters 25 April 2016 and 31 May 2016 from a bank which named Miss Carrie Ann McKendry and Douglas McKendry as the partners of McKendry Coaches, with security from Mr D McKendry. Also submitted as a "Promissory note" from borrower McKendry Coaches to lender MVPA of Stirling, dated 15 April 2016, and signed by Mr J McDonald for the lender. MVPA is the abbreviation of Motor Vehicle Protection Association and bank statements for that entity were produced in support of the application.
3. Mr Douglas McKendry, Mrs Ann McKendry and the trading name of McKendry Coaches are well known to me and the Office of the Traffic Commissioner.
4. In January 2004 following a Public Inquiry Deputy Traffic Commissioner, Mr R McFarlane, found Mr Douglas McKendry to be no longer of good repute and disqualified him for 2 years (written decision dated 29 January 2004 refers). He refused an application for a partnership of Douglas McKendry and Ann McKendry. In June 2004, the Deputy Traffic Commissioner did grant an operator licence to Mrs Ann McKendry but with the condition that Douglas McKendry will not be involved, in any way, in the management of the business.
5. Following a Public Inquiry on 15 July 2005, the Deputy Traffic Commissioner gave a warning to Mrs McKendry's licence. In 2009, I held a Public Inquiry in respect of Mrs Ann McKendry's licence and reduced the authorisation from 14 vehicles to 10 (written decision dated 2 December 2009 refers). In 2010, the licence received a warning for poor annual test presentation.
6. On 16 March 2012, Deputy Traffic Commissioner, Mr S Evans, following a Public Inquiry, reduced the authorisation on the licence to 8 discs for a period and found transport manager Mrs McCallum's repute to be severely tarnished. Deputy Traffic Commissioner Mr Evans considered the licence again in 2013 and reduced the licence to 5 vehicles - (Mr Evans' written decisions of 16 March 2012 and 8 February 2013 refer). On 27 October

2014, Mrs McKendry received an Office of the Traffic Commissioner warning in respect of displaying another operator's disc.

7. In March 2016, my Office became concerned that Mrs Ann McKendry had been sequestered yet this had not been intimated to my Office. This proved to be so and the licence terminated.
8. On 9 and 29 August 2016, I held a Public Inquiry to consider applications respectively by Miss Carrie Ann McKendry and Mr Douglas McKendry for the return of public service vehicles impounded by DVSA on 7 July 2016. I issued a written decision dated 12 October 2016 in which I refused the return of the said vehicles. That written decision can be referred to for its terms and is held repeated herein *brevitatis causa* (lawyer's words for as if fully repeated in this document).
9. I found that I was not satisfied by either applicant's claim to ownership of the vehicles and also that I was not satisfied that they did not know that the vehicles were being or had been used in contravention of section 12 of the 1981 Act.
10. At that Public Inquiry, the applicants were represented by Mr James McDonald who designed himself as a paralegal. At paragraph 14 I recorded that I was concerned by Mr McDonald. The application confirmed that they wished him as their representative. At paragraph 40 I recorded that he had been to Leeds in May with Mrs McCallum to lodge this application for a licence. At paragraphs 100 and 101, I made observations in relation to Mr James McDonald's involvement and his background.
11. My impounding decisions of 12 October 2016 were appealed to the Upper Tribunal which heard the appeal on 9 March 2017 and issued their decision on 24 May 2017 dismissing the appeal. The Upper Tribunal's decision is dated 24 May 2017 and can be referred to. The appellants thereafter sought leave to appeal to the Court of Session. In a decision dated 12 September 2017, leave was refused. The appellants thereafter applied to the Court of Session for leave to appeal. In the Opinion of the Court dated 30 January 2018, Lady Paton refused permission finding no error in the approach I had taken in my impoundings decisions of 12 October 2016. That Opinion can be referred to for its terms.
12. Against the background of the sequestration of Mrs Ann McKendry which had not been notified to my Office, I was not prepared to grant the application by Carrie Ann McKendry and Tracy Jane Lander without calling the application to a Public Inquiry. I was not prepared to list a Public Inquiry when the appeals against the impoundings decisions were ongoing. I was concerned by the links to Mr Douglas McKendry, Mrs Ann McKendry and the continuing operation following sequestration. I was concerned that the finance documents named Mr Douglas McKendry as if a partner. I was concerned by the involvement of Mr James McDonald in the application given his history and behaviour as described in my written decision of 12 October 2016. Mr McDonald was taking on the role of spokesperson and representative for the application and the appeals. It appeared that the application was a "fronting" by members of the McKendry family for others in the family as well as the applicants. For all these reasons this application required a Public Inquiry and that could not proceed pending the outcome of the impoundings appeals.
13. Mrs Nicola McCallum, nominated transport manager, passed away on 28 May 2017.
14. The Court of Session having refused leave to appeal, I directed that this application could now come to a Public Inquiry and the usual call up letter and brief of papers were issued on 5 April 2018.

15. There was no response to the call up letter which did highlight the absence (through death) of a transport manager and the need to demonstrate financial standing by submitting such to my Office by 30 April 2018. Given lack of response, my Office contacted Miss Carrie Ann McKendry by phone on 2 May. She stated that they did not intend to appear at the Inquiry and wished to withdraw the application. On 9 May, that is the day before the Inquiry, the applicants emailed to say they no longer wished to continue with the application and wished their email accepted as their notice to cancel the application. I directed that a reply be sent advising them that I declined to accept withdrawal and that I considered it to be in the public and regulatory interest that the Public Inquiry proceeds. If there was non-attendance I would make a decision in their absence.
16. I took this decision to refuse withdrawal with the case law of *Thomas Muir [1999] SC 86; Alacline Ltd TT 8/2000; and Davis Haulage Group Ltd T/2017/18* very much in mind. I distinguish this case from the Davis case given that the application was on the brink of the Public Inquiry and there was a great deal in the Public Inquiry call up letter and brief which was of regulatory and public interest.

### **Public Inquiry**

17. The Public Inquiry duly convened on 9 May 2018. There was no appearance by anyone on behalf of the applicants nor any written submissions.

### **Consideration of the application and my decision**

18. The background to this decision is set out at length in my detailed written decision of 12 October 2016. Thus, I can be very brief in this decision. This is not a straightforward application. It purports to be from Miss McKendry and Mrs Lander yet Mr Douglas McKendry's email is given and his name is on the bank documentation as if the bank understands there to be a partnership of him and Miss McKendry. This is so resonant of the on/off partnership arrangements between Douglas and Ann McKendry which they changed over when it suited them. Mr James McDonald, a person who would never now pass the test of repute for an operator licence, has continued as a presence in the McKendry activities. He was bound up in the Ann McKendry sequestration responses, the unlawful operation, the confused and misleading representations to me at the Public Inquiry and the time-wasting, hopeless appeals to the Upper Tribunal and Court of Session. His involvement in the financing of this application is not an involvement I could accept.
19. Miss McKendry and Mrs Lander were aware of the continued operation after Ann McKendry's sequestration. That deprives them of repute. Were I to grant this application I would not know who actually would be operating – would it be Douglas, Ann, Ann and Douglas, Carrie Ann and Tracy – who? I would not be sure and I could not trust them given the history and circumstances leading to the making of this application in May 2016. Trust is at the heart of operator licensing. In considering this application I am the gatekeeper (to use a phrase from the case of *Aspey Trucks (T2010/49)*). There is nothing about this application which could reassure me that a trusting relationship between operator and Traffic Commissioner lay ahead.
20. The sad demise of Mrs McCallum deprived this application of a transport manager. The applicants did not nominate a replacement. No up to date evidence of financial standing was produced in response to the call up letter.
21. I refuse this licence as I am not satisfied as to good repute. Indeed I go further, there is no repute in the applicants Tracy Jane Lander and Carrie Ann McKendry who put their names to this application. There is no financial standing; there is no professional competence.

**My decision**

22. I refuse this application by Miss Carrie Ann McKendry and Mrs Tracy Jane Lander as I find that they are not of good repute; that I cannot be satisfied that there is financial standing; and that the applicants did not nominate any person of good repute to be transport manager on the licence; thereby the application does not have professional competence. Sections 14ZA and Schedule 3 of the 1981 Act apply.

Joan N Aitken  
Traffic Commissioner for Scotland

10 May 2018