



## WEST MIDLANDS TRAFFIC AREA

### DECISION OF THE TRAFFIC COMMISSIONER

PUBLIC INQUIRY HELD IN BIRMINGHAM ON 10 MAY 2018

OPERATOR: DEMILEX TRANSPORT LTD

LICENCE OD1124829

#### **Decision**

1. The standard international goods vehicle operator's licence held by Demilex Transport Ltd is revoked with effect from 0001 hours on 19 June 2018, pursuant to 27(1)(a) of the Goods Vehicles (Licensing of Operators) Act 1995 ("the 1995 Act").

#### **Background**

##### *Operator details*

1. Demilex Transport Ltd holds a standard international goods vehicle operator's licence (OD1124829) for seven vehicles and six trailers. There are three vehicles in possession. The licence was granted in December 2013. The sole director of the company is James Anthony Finch. The nominated transport manager is Ian Keith Evans.

##### *Finance review*

2. In January 2018 the central licensing unit in Leeds requested evidence of financial standing from the company. The resulting bank statements showed access to an average of [REDACTED] over three months, far below the £34,350 necessary to support seven vehicles and below even the £7,950 required to support just one vehicle.

#### **Public inquiry**

3. In the light of this substantial shortfall, I decided to call the operator to a public inquiry. The call-up letter was sent on 11 April 2018, citing Section 26(1)(c)(iii), (ca) and (f) and Section 27(1)(a) of the 1995 Act. The inquiry was held in Birmingham on 10 May 2018. James Finch attended for the operator.
4. The operator presented evidence of financial standing in the form of bank statements covering the three month period until 8 May 2018. The average available over that period, taking into account the company's overdraft, was [REDACTED], slightly less than the amount which had previously been demonstrated to Leeds. Mr Finch presented further

bank and credit card statements relating to his personal bank account, but the senior traffic commissioner's guidelines prevented me from taking these into consideration as they were in his own name, not the company's.

5. From other paperwork I examined at the inquiry, it emerged that:
- i) the nominated transport manager Ian Evans had ceased to be paid at the end of November 2016. This meant that he had therefore no genuine link with the operator, as required by Regulation EC 1071/2009. There was indeed little sign that he was carrying out his duties. Mr Finch stated that Mr Evans attended "once a week or once a fortnight". I noted that driver infringement letters had Mr Evans's name printed at the bottom but he had not signed them. There was no other evidence of his involvement;
  - ii) vehicle PF12 OYH had recently failed its MOT because of the poor condition of three of its tyres (with a further two tyres receiving an advisory);
  - iii) there were gaps of more than the stated six weeks in some vehicle safety inspection intervals (eg PF12 OYH did not appear to have been inspected between 13 January 2018 and 4 April 2018);
  - iv) the safety inspections for PF12 OYH revealed it to be in a consistently poor condition;
  - v) no missing mileage reports were available;
  - vi) drivers had committed frequent drivers' hours offences;
  - vii) a driver's CPC had expired but it had been two months before the operator noticed and drew it to the driver's attention;
6. Mr Finch accepted that standards had slipped and that some safety inspections had been missed. He needed to get more on top of drivers' hours. He planned to take the transport manager exam himself. The business had fallen on hard times after the loss of a contract with Asda. Its current scrap metal work was not proving profitable as the tyres were picking up frequent damage at the scrap metal yards. A new contract carrying clay, destined to be much more profitable, was due to start in June. Mr Finch asked for a further chance.

## Findings

7. After considering the evidence I have made the following findings:
- i) the operator lacks financial standing (Section 27(1)(a) refers). In no three month period since at least October 2017 has the operator been able to show financial standing amounting to an average of greater than ████████, insufficient even for one vehicle on a standard licence. Mr Finch pleaded for a further period of grace in which to re-establish the company's finances on a firmer footing, but in essence that period of grace has already been given – the period between submitting finances in early February and the public inquiry on 10 May 2018 when the picture had in fact deteriorated slightly. I see no realistic prospect of a significant improvement.
  - ii) the operator lacks the required professional competence (Section 27(1)(a) also refers). Its internal transport manager Ian Evans ceased to be paid at the end of November 2016. No written contract with him as an external transport manager was agreed and he was in any event not paid any further money so not even a

verbal contract can have existed. The lack of involvement of a transport manager is evident in the poor management of drivers' hours, vehicle maintenance and driver entitlement which became evident during the inquiry;

- iii) the operator has failed to fulfil its undertakings to keep vehicles fit and serviceable, to have them inspected every six weeks and to ensure that rules on drivers' hours and tachographs are observed (Section 26(1)(f) of the 1995 Act refers).

### **Decisions**

- 8. The operator lacks financial standing and professional competence. Revocation of the licence is therefore mandatory under Section 27(1)(a). I am not prepared to extend any periods of grace in which to rectify the situation as the operator has lacked financial standing even for one vehicle for at least the last seven months and has lacked a transport manager for almost 18 months. The results can be seen in the poor management of the licence and the poor condition of the vehicles.
- 9. The revocation of the licence will take effect on 19 June 2018. If Mr Finch wishes to re-enter the industry in the future, he must first ensure that the business is adequately capitalised and engage a qualified transport manager under a written contract setting out the transport manager's duties and a commensurate rate of pay.



Nicholas Denton  
Traffic Commissioner  
17 May 2018