



**DECISIONS OF THE TRAFFIC COMMISSIONER  
FOR WALES**

**Shane Jones Timber Haulage Ltd – OG1120685  
&  
Transport Manager – Shane Jones  
&  
Driver – Shane Jones – JONES 611309 \*\*\*\*\*  
&  
Rowland Scott Ward – OG0094927  
&  
Transport Manager – Rowland Scott Ward  
&  
Driver – Rowland Scott Ward – WARD9 512165 \*\*\*\*\***

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

**Decisions made in respect of the operator’s licence held by Shane Jones Timber Haulage Ltd**

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

6. Shane Jones is disqualified from holding or applying for an operator's licence in any traffic area for a period of 18 months, section 28 of the Act.

**Decisions made in respect of Transport Manager Shane Jones**

7. Shane Jones has lost his repute as a transport manager. He is disqualified from holding or applying for a transport manager position, including anywhere within the EU, until he passes new examinations.

**Decisions made in respect of the vocational licence held by Shane Jones**

8. Shane Jones is unfit to hold a vocational licence and it is revoked. He is disqualified from holding or applying for a vocational licence for a period of 18 months.

**Decisions in respect of the operator's licence held by Rowland Scott Ward (these were announced, together with reasons, at the conclusion of the public inquiry).**

9. Adverse findings are made under sections 26(1)(f) and 26(1)(h) of the Act.

10. The operator has not lost his repute, however it is severely tarnished.

11. The operator continues to meet the requirement of financial standing.

12. The operator no longer satisfies the requirement to be professionally competent under sections 13A(2) and 27(1)(a) of the Act.

13. The operator agrees to the following two undertakings being recorded on the licence:  
(a) Anthony Cribb of DMTS is to be employed by the operator to assist with paperwork. Any change to this arrangement will be immediately reported in writing to the Traffic Commissioner with a full explanation.

(b) In 12 months there will be an audit of maintenance systems and documentation conducted by a suitable trade association. The audit will be copied to the local DVSA office and to the OTC.

14. The standard international operator's licence is downgraded to a restricted licence.

15. The operator's licence was suspended from the conclusion of the public inquiry held on 21 May 2018 until 0001 hours on 1<sup>st</sup> June 2018.

**Decisions made and announced with reasons at the conclusion of the public inquiry in respect of Transport Manager Rowland Scott Ward**

16. Rowland Scott Ward lost his repute as a transport manager. He was disqualified from holding or applying for a transport manager position, including anywhere within the EU, until he passes new examinations.

**Decisions made and announced with reasons at the conclusion of the driver conduct hearing in respect of the vocational licence held by Rowland Scott Ward**

17. Rowland Scott Ward was told that he was unfit to hold a vocational licence and it was suspended from the conclusion of the hearing until 0001 hours on 1<sup>st</sup> June 2018.

## **Background**

18. Shane Jones Timber Haulage Ltd was granted a standard national operator's licence in 2013 with authority for two vehicles and two trailers, Shane Jones was the sole director, principal driver and transport manager. Rowland Scott Ward was granted a standard international operator's licence in 1999 with authority for two vehicles and two trailers, he was also the nominated transport manager. A DVSA investigation revealed a number of concerns including Shane Jones using Rowland Scott Ward's digital driver card, this led to a public inquiry before me in respect of both operator licences, both transport managers and both Shane Jones and Rowland Scott Ward as vocational drivers.

## **Public Inquiry**

19. TE Alexander Bell attended and answered questions.

20. Shane Jones attended the conjoined public inquiry and driver conduct hearing unrepresented, his one vehicle in possession was apparently parked up and he told me he had an expectation that his licence would be lost. At the conclusion of the hearing I explained that I would be: revoking the operator's licence; making an order of personal disqualification under section 28 of the Act; making a finding that he lost his reputation as a transport manager, with a consequent disqualification order; and, making a finding that he was no longer fit to hold a vocational licence with a warning that he should expect a lengthy disqualification period.

21. Rowland Scott Ward attended represented by Miss Elizabeth Caple, solicitor, as well as Anthony Gibb of DMTS, a consultancy. At the conclusion of the evidence and after hearing representations I indicated the outcomes was that I was minded to make in respect of Rowland Scott Ward. Having made it clear that I was prepared to produce a full written decision with detailed reasoning, Rowland Scott Ward took advice from his solicitor and reluctantly accepted my decisions. I made decisions as set out above with oral reasons. Unless it is necessary for completeness, I have not set out the issues in respect of Rowland Scott Ward as, effectively, this is a written decision for Shane Jones Timber Haulage Ltd, Shane Jones as a transport manager and Shane Jones as a vocational driver.

22. Most decisions of a traffic commissioner do not require a written decision and in the case of Rowland Scott Ward there was a discussion on whether one would be needed, the answer was negative and I gave an oral decision. This contrasts with Shane Jones for three reasons: first, in the case of Shane Jones I make orders of revocation and disqualification and this in itself ordinarily requires a written decision; secondly, Shane Jones was not represented despite facing very serious allegations; and, thirdly, this is a case where my written decision will be circulated to both the trade press and the local press as operators and drivers must know of the serious consequences of the failures identified

## **Evidence**

23. The evidence set out below relates to Shane Jones Timber Haulage Ltd, Shane Jones as a transport manager and Shane Jones as a vocational driver. Although the evidence necessarily refers to Rowland Scott Ward and the decisions at the commencement of this written decision also show a suspension of Rowland Scott Ward's operator's licence, for the avoidance of doubt there was no cogent evidence of Rowland Scott Ward being complicit in the unlawful use of his drivers' card by Shane Jones. There were suspicions and this contributed to my convening of a public inquiry for both operators.

24. In conducting an inquisitorial process I seek to get to the truth of matters based on evidence and adopting the principle that was set out by the House of Lords in Re H and R (1996)(1)FLR80 where it was confirmed that in all civil proceedings the standard of proof required is always the balance of probabilities – with the helpful guidance that the more serious an issue or allegation, the more cogent the evidence that is required. Reflecting on the totality of the evidence and coming to findings of fact, I did not make any adverse finding to effect that Rowland Scott Ward knew of Shane Jones using his driver' card.

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

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

26. TE Bell commenced an investigation into Shane Jones Timber Haulage Ltd in June 2017, a production letter was sent to his home address with no response and it transpired that he had moved but not notified my office of his current address. Another request was sent to the operator's business address when some information was supplied but Shane Jones was unable to produce digital tachograph information. The examiner downloaded information from the tachograph vehicle unit and Shane Jones's driver card, he was usually the sole driver for the business which at that time had one vehicle.

27. On 28 July 2017 Shane Jones met with TE Bell and produced Rowland Scott Ward's driver card, he was told that if he had used Mr Ward's driver card now was the time to tell the examiner. Shane Jones was adamant that he had not used Rowland Scott Ward's driver card whilst he, Shane Jones, was driving the HGV. It was apparent that Rowland Scott Ward occasionally drove for the operator.

28. Shane Jones had told the examiner that his computer was not working and he did not have facilities to download either the vehicle unit or driver card.

29. The investigation continued with TE Bell meeting with Rowland Scott Ward on several occasions, this then resulted in TE Bell meeting with Shane Jones again on 16 October 2017 when offences were explained to him. The offences related to it being apparent that Shane Jones had used Rowland Scott Ward's driver card to avoid taking appropriate daily and weekly breaks, this was denied. The interview was suspended to allow Shane Jones to obtain legal representation. Both written and oral evidence from TE Bell described Shane Jones as being irate.

30. Later Anthony Cribb of DMTS, a local tachograph analysis business, contacted TE Bell to advise that he was representing Shane Jones and arranged for an interview when

admissions would be made. A further interview was held on 7 November 2017 when Shane Jones admitted to using Rowland Scott Ward's driver card on six separate occasions, it had been clear to the DVSA examiner that this had occurred from his analysis of the downloads from the relevant driver cards and the vehicle unit.

31. During this interview it was also established that Shane Jones regularly parked his HGV at his home address instead of the registered operating centre. The explanation was due to convenience and a claim that he suffered from fuel theft at his operating centre.

32. It was pointed out to me by TE Bell that on most of the occasions when offences were committed a second driver card might not have been needed, he was told by Shane Jones that he used the second card to *"get a good start on the next week"* and *"to pay off my debts"*. He went on *"I've put my card in, the tachograph has told me I've needed more rest, I've then put Mr Ward's card in and loaded up. Then I put my card in and waited until the rest was up."*

33. When answering questions from me it was clear that Shane Jones had been involved in domestic difficulties including a divorce. His former wife had been director but resigned prior to the offences being committed. It was evident that Shane Jones had made a number of poor judgement calls following his domestic difficulties.

34. The MOT first-time pass rate was very low with no passes and two failures in the two years preceding the public inquiry. The longer term test history shows a mere 25% first-time pass rate.

35. Guilty pleas were entered at a local magistrates' court to the offences disclosed with financial penalties imposed.

### **Findings of fact and reasoning**

36. I accept all the evidence from TE Bell and, in fairness to Shane Jones, he admitted the accuracy of the DVSA evidence when he attended before me.

37. In conducting a balancing exercise I note that the offences revealed were very serious ones and that on two separate occasions they were vehemently denied; the vehicle was not maintained properly as evidenced by the very poor MOT first time pass rate; and, the operator regularly parked the HGV at his home address, not his authorised operating centre. Positive features are that the offences were eventually admitted; in some cases use of a second driver card wasn't needed; the operator was open before me at the public inquiry; and, the offences appeared to have flowed from the consequences of a marriage breakup. However the positive features are more than offset by the serious negative features.

38. Of the significant failings, the most serious was the deliberate repeated use of someone else's driver card.

39. In this case there was an appalling MOT first-time pass rate indicating that vehicles were not maintained safely and went out in a highly unsatisfactory condition.

40. The operator has admitted to parking at his home address, it was clear that this was so from the analysis conducted by TE Bell. It is wholly unacceptable for an operator to park at a residential address, this is a common feature of complaints received by traffic commissioners from irate members of the public who suffer as a result. Parking at a home address also gives an operator an unfair competitive advantage. As Traffic Commissioner

for Wales I confirm that it is wholly unacceptable for operators to ordinarily park other than at the registered operating centres and breaches, if substantiated, will result in firm, albeit proportionate, regulatory action.

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

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

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

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

*“the impact of unfair competition is insidious in that it gradually and subtly undermines the confidence of compliant operators that their competitors will comply with the regulatory regime and thus compete fairly. What matters is the perception that other operators are competing unfairly not whether they are achieving any benefit as a result. Once rumours, of unfair competition spread, (or clear evidence of it become apparent), the assumption will be made that it must be advantageous because there would be no point in running the risks involved if it was not. It is also corrosive because once rumours of unfair competition (at the very least), begin to spread the perception that some operators are competing unfairly (whether or not they profit by doing so) has a damaging effect. It means that normally compliant operators will feel tempted to “cut corners” in relation to the regulatory regime in order to remain in business. Some may decide to resist that temptation but others are likely to succumb. The end result, if swift and effective steps are not taken to stamp out unfair competition, is that the operators who are most determined to remain compliant will be at greatest risk of being put out of business, even though they are the very operators who most deserve to remain in the industry. Trust, whether between operators and the traffic commissioner or between operators themselves, is all too easily destroyed. Rebuilding it, if that is even possible, is likely to be a long and slow process.”*

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

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

*date not only of the public inquiry but also of the appeal. This is a bad case and we hope that the message sent out will be clear to all."*

45. When I ask myself the Priority Freight question, I answer in the negative as I do not trust the operator. I answer the Bryan Haulage question in the affirmative. My decision to revoke the licence is an obvious one.

46. Shane Jones was also before me to consider taking away his repute as a transport manager. He has knowingly committed very serious offences of using someone else's driver card to circumvent the requirement for rest, this is serious as tired drivers are exponentially more likely to be the cause of death or serious injury. There are significant road safety issues. Additionally in this case the transport manager has allowed an HGV to be parked in a residential area on a regular basis, which is wholly unacceptable. The evidence on file relating to vehicle condition is that maintenance was woefully unsatisfactory, putting other road users at risk.

47. It is proportionate that Shane Jones loses his repute as a transport manager. Legislation requires that loss of repute as a transport manager must be followed by a period of disqualification. Case law is clear and my options are for a time-limited period of disqualification, an indefinite period of disqualification or a disqualification until an act has occurred. In this specific case the lack of basic knowledge displayed by Shane Jones is such that I require him to requalify as a transport manager taking fresh examinations. This does not mean that he could automatically be employed as a transport manager if he passed examinations in the near future, as an indication I make it clear that I anticipate that it would be unlikely for a traffic commissioner to consider that he is suitable to be a transport manager for a period of at least 18 months - and at that stage he would also have needed to requalify.

48. I consider that Shane Jones should be kept out of the operator licensing system for a period of time. When considering section 28 of the 1995 Act I reflect that this is a case where a disqualification is proportionate. I have reflected on the helpful guidance from the Senior Traffic Commissioner in his statutory document number 10 on The Principles Of Decision Making & The Concept Of Proportionality, especially paragraph 93. A personal disqualification of 18 months is fully merited.

49. In the case of Shane Jones's vocational licence the offending behaviour requires a deterrence as set out in paragraph 42 of Statutory Guidance Document Number 6 on Driver Conduct, issued by the Senior Traffic Commissioner.

50. As I pointed out to Shane Jones there is helpful guidance in the Senior Traffic Commissioner's statutory guidance document number 6 on driver conduct where a case example, number 21, in annex C, refers to an LGV driver knowingly using someone else's driver card on a single occasion in circumstances almost identical to this case. Here the statutory guidance is to effect that the starting point is revocation of the vocational licence and a 12 month disqualification. It follows that more than a single action will result in a longer disqualification period. Indeed, this is corroborated by a series of Scottish cases including Cameron John Young v Secretary of State for Transport (2011) B434/10 and also the judgement of Sheriff Principal Lockhart in the case of Bruce Kirkpatrick v Sec of State for Transport and a deputy traffic commissioner B435/10.

51. This was not an isolated act and I would be entitled to disqualify Shane Jones for several years. However I recognise that each case is taken on its merits and I take into account the helpful High Court case of Meredith and Others (2009) EWCR 2975 (Admin). The fact that the driver was both an operator and a transport manager is an aggravating feature, however

there is a clear mitigating factor too. Although the offending was undoubtedly exceptionally serious, it was committed during a period when the driver was very much distracted as a result of his marriage breakdown. That is of course no excuse but reflecting on Shane Jones's future, it is proportionate that I limit the period of disqualification to a mere 18 months in this case. The statutory guidance sets out a clear starting point of a full 12 months for a single offence, my revocation and 18 months disqualification of the vocational entitlement is consistent with both the statutory guidance and the facts of this case.

### **Decisions**

52. I make decisions as set out in paragraphs 1-17, above.

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

**Nick Jones**  
**Traffic Commissioner for Wales**  
**Comisiynydd Trafnidiaeth**

**8 June 2018**