



**SOUTH EASTERN AND METROPOLITAN TRAFFIC AREA**

**DECISION OF THE DEPUTY TRAFFIC COMMISSIONER**

**PUBLIC INQUIRY HEARD AT IVY HOUSE, IVY TERRACE, EASTBOURNE ON  
25 JUNE 2018**

**OK1129172 TYRE CHANNEL LIMITED**

**Decision**

**Breach of Section 26(1) (c) (ca) (e) and (f)) of the Goods Vehicles (Licensing of Operators) Act 1995 found**

**Licence revoked in accordance with Section 26 of the Goods Vehicles (Licensing of Operators) Act 1995 – the order to take effect from 00.01 hours on the 31 July 2018**

**Director Anup Patel is disqualified for six months from 00.01 hours on the 31 July 2018 from holding or obtaining an operator's licence.**

**I also direct under Section 28 (4) of the Act that if Anup Patel is a director or has a controlling interest in a company during that period any operator's licence held by that company will be subject to revocation suspension or curtailment.**

**Background**

- 1. The operator Tyre Channel Limited is the holder of a restricted licence granted on the 27 June 2014 authorising two vehicles with two vehicles currently in possession. The sole director of the company is Anup Patel.**
- 2. On the 22 and 28 November 2017 a maintenance investigation was carried out following the issue of an S marked prohibition on the 24 May 2017. The result of the investigation was unsatisfactory as a result of excessive periods between preventative maintenance inspections, the driver daily walk round checks were ineffective as evidenced by the**

defects being found at the maintenance inspections or when prohibitions were issued. There was no forward planning system for inspections in place and prohibitions as well as fixed penalties had been issued. It also transpired that the operator had been operating 4 vehicles overall by interchanging vehicles as and when required. It also appeared that the operator was exceeding the number of vehicles authorised to be kept at one of the nominated operating centres. The first hearing of the inquiry took place on the 10 April when the operator failed to produce the documentation required for the hearing. The inquiry was adjourned until the 26 June 2018 and a number of case management directions were made including a request that Vehicle Examiner Labbadia attend the operating centre and prepare an additional report to that prepared for the original hearing. A visit and report was also requested to show whether the operator was operating more vehicles than the number authorised under the licence.

3. The subsequent reports from Traffic Examiners Clarke and Morris showed a number of failings in relation to the drivers' hours compliance regime, vehicles not being specified on the licence when used for periods exceeding 28 days and no vehicle unit downloading taking place. Analysis of the tachograph records did show that no more than two vehicles had been used on any one day.
4. When Vehicle Examiner Labbadia revisited the operating centre on the 11 April 2018 he found that some recent PMI records had not been completed in full, there was no torque wrench when the operator carried out re-torqueing of wheel nuts and mileage was not recorded on some driver defect sheets. Mr Labbadia reported the continued use of a vehicle EU56 EWB when not specified as an authorised vehicle on the 12 April 2018 which was two days after the first hearing of the inquiry and one day after Mr Labbadia had spoken to Mr Patel about the importance of specifying vehicles which were being used.  
It was also noted that subsequent to the maintenance investigation in November an "S" marked prohibition had been issued on 17 January 2018, a delayed prohibition on the 9 February 2018 and an advisory notice and fixed penalty for a tachograph offence on the 26 February 2018.

### **The Public Inquiry**

5. Mr Patel attended the public inquiry and was not represented. He explained the nature of his business which involved the collection of scrap tyres for export to India. He said that he was applying to increase the vehicle fleet to 4 authorised vehicles and to vary the number of vehicles authorised to be kept at the operating centre at Mill Lane, Croydon. He accepted that currently there is approval for 1 vehicle only at the operating centre and that he keeps 2 vehicles there. In relation to the problems that had been shown in relation to preventative maintenance inspections he

said that the maintenance contractors had been relied upon and they had let him down. Mr Patel accepted that vehicle unit downloads of tachograph records had not been taking place but said that driver infringements had been noted and actioned. Brake tests were now taking place, he had attended a DVSA new operator seminar, improvements in all areas were being made and the prohibitions issued since November were in relation to matters which were beyond his control as an operator.

6. Vehicle Examiner Labbadia said that in his opinion there had been improvements since November, the MOT pass rate was much better and the periods between recent PMIs were on track. His report showed that the 2 year prohibition rate was 57% compared to 26% nationally and he told me that some of the defects found when prohibitions were issued had been safety critical and included tyre, steering and brake defects

### **Findings and Decision**

7. I find that there have been breaches of Sections 26 (1) (c) ca) (e) and (f) of the Goods Vehicles (Licensing of Operators) Act 1995. Having made those findings I have to decide whether the operator is fit to hold a licence and in this regard I have asked myself the question as set out in the case of Priority Freight Limited & Paul Williams i.e. how likely is it that this operator will operate in compliance with the operator's licensing regime? In other words can the operator be trusted going forward? In answering that question I remind myself first of all that this is licence issued in June 2014 i.e. over 4 years ago. The operator is not one who is new to the industry therefore but has only after four years started to make efforts to meet the compliance standards that are required. Whilst improvements have been made leading up to the inquiry there is still a way to go and I have to ask myself if Mr Patel is likely to sustain what has been achieved so far and make the further improvements required. Past behaviour is an indicator of what is likely to happen in the future and this does not bode well for the operator. In the four years since grant there has been very little effort made to find out what is required and to function as a compliant operator. The fact that Mr Patel arrived at the first hearing of the inquiry without any of the documentation he was told to bring does not help his case nor does the fact that two prohibitions, one "S" marked, and a fixed penalty were issued between the original maintenance investigation and the public inquiry. It also highly relevant that the operator continued to use a vehicle which was not specified on his licence two days after the first hearing and one day after discussing the importance of not doing this with the Vehicle Examiner. In addition I have to consider the deficiencies found by the Traffic Examiners coupled with the continued blatant keeping of more vehicles than the number allowed at the operating centre. On the positive side the operator has made improvements leading up to the public inquiry and I believe that he is sincere is what he is promising to do additionally. My conclusion however is that it is unlikely that the progress to compliance will be sustained. I reach this conclusion as a result of what has happened

in the past and from my assessment of Mr Patel. He provided details of his various business interests in advance of the inquiry and I believe that he will shift his focus to those or other matters once the “heat” of the public inquiry has died down. Having answered the Priority Freight question as a negative I also need to consider whether the operator deserves to be put out of business and I conclude that the answer is yes based on the interests of public safety and fair competition. I do so neither lightly or easily but I find that this is a proportionate and necessary action as a result of what I have found.

8. My decision is therefore to revoke this licence in accordance with Section 26 of the Goods Vehicles (Licensing of Operators) Act 1995 – the order to take effect from 00.01 hours on the 31 July 2018. In relation to Mr Patel as sole director of the company I have considered whether he should be disqualified from holding or obtaining a licence and have decided that he should be for a period of six months. This is a shorter period than is often ordered because I believe that Mr Patel has got into the current situation as a result of inattention as opposed to a deliberate disregard for compliance. Once this period is over he may wish to apply for a new licence but if he does he will need to show that mature thought has gone into how compliance will be assured and maintained. If he does not do so it is unlikely in my view that a new licence will be granted.

The formal order is therefore that Anup Patel is disqualified for six months from 00.01 hours on the 31 July 2018 from holding or obtaining an operator’s licence. I also direct under Section 28 (4) of the Act that if he is a director or has a controlling interest in a company during that period any operator’s licence held by that company will be subject to revocation suspension or curtailment.



**John Baker**  
**Deputy Traffic Commissioner**

**3 July 2018**

