



## **BLACKGATE LTD**

**OH1008122**

### **PUBLIC INQUIRY IN BRISTOL**

**3 JULY 2018**

#### **DECISION**

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

Pursuant to findings under Sections 26(1)(c)(iii) and 26(1)(f) of the Act, licence OH1008122 is curtailed to three vehicles from 6 August 2018 until 31 August 2018. Thereafter, it is curtailed to four vehicles indefinitely. The operator can apply for the curtailment to be removed in January 2019.

The good repute of transport manager Julie West is severely tarnished but not lost.

#### **BACKGROUND**

1. Blackgate Ltd is the holder of a Standard National operator’s licence granted on 30 August 2002 currently authorising the use of five vehicles and one trailer. Five vehicles are recorded as in possession at an operating centre in Highbridge, Somerset. Authority had been ten vehicles but was voluntarily reduced by the operator in 2017. The directors on the operator licensing system are Terry West and Julie West. Companies House also records Simon West and Sarah Bowen as additional directors since 2006, although these have never been notified despite the return of three 5-year checklists since that date.
2. On 6 January 2018, DVSA Traffic Examiner Thomas Coghlan encountered vehicle WX13VJN at Tormarton (M4 Junction 18). The vehicle was found to be 10.8% overloaded on the front axle. The driver, Stephen Parker, was not

the holder of a driver Certificate of Professional Competence (CPC). This generated a follow-up investigation by Traffic Examiner Amy Comer.

3. TE Comer identified significant and serious abuses of drivers hours and tachograph rules. She further identified that the listed transport manager, Julie West, was no longer in the business having become estranged from her husband Terry West.

4. This caused me to call the licence to public inquiry on the following grounds:

Section 26(1)(c)(iii) of the Act, that vehicles or drivers have been issued with prohibition notices;

Section 26(1)(f) of the Act, that any undertaking recorded in the licence had not been fulfilled, that is that vehicles would not be overloaded and that the rules on drivers hours and tachographs would be observed;

Section 26(1)(h) of the Act, that there had been a material change in the circumstances of the licence holder in that he named transport manager was not exercising continuous and effective control;

under Section 27(1)(a), that the operator may not be of good repute, of the appropriate financial standing or meet the requirements of professional competence;

under Section 27(1)(b) of the Act, that the operator did not have a transport manager who is professionally competent and of good repute.

5. Mrs Julie West was called separately to consider her repute as Transport Manager under Schedule 3 of the Act.

## **THE PUBLIC INQUIRY**

6. Mr Terry West, Mrs Julie West and Robert Oake attended for the operator represented by Elizabeth Highams, AMD Solicitors. Also in attendance for the operator was transport consultant Barry Hood of PROTECT Solutions. Three of the operator's drivers attended for conjoined driver conduct hearings. Separate decisions are produced for them. Traffic Examiner Amy Comer attended for DVSA.
7. Ms Highams provided submissions in advance for which I was grateful. I was also provided with a bundle of documents including an audit conducted by PROTECT Solutions.
8. Proceedings were recorded and a transcript can be produced as required. I do not record all the evidence here, only that which is necessary to come to a decision.
9. Finances were satisfactory.

## **Relevant matters arising from the driver conduct hearings**

10. Driver Chambers had become in the habit of pulling the card to get home on a Friday evening without taking a further 45 minute rest. The drivers hours infringements concealed by the activity were mild to moderate. The company had not identified the offending which spanned a period of months,
11. Driver Stutt had significant and serious personal issues ongoing at the time. He pulled the card habitually so that he could get home to his family. The company had not identified the moderate to severe offending including periods of driving of up to nearly 7 hours without any break.
12. Driver Parker normally drove vans up to 3.5 tonne. On the day he was stopped, he was driving a vehicle that appeared to be a van but had a plated weight of 5 tonnes. He had thought nothing of the difference, despite needing to use a tachograph card which he had done. He had received no training on loading. He had two speeding offences, both in company vans in the same location near Bodmin in temporary speed limits.

## **The evidence of Julie West, Director and Transport Manager**

13. Mrs West had been in the haulage of newspapers since 2002. She became transport manager in 2007. She had met Terry at 17 and they had worked together and been together from that point. The business had grown to ten vehicles and was successful and professionally run. In 2013, they had been undercut by a competitor and lost one contract. Another was lost shortly after leading to the downsizing in 2017.
14. Mrs West had separated from Terry West in early 2017. She had kept in touch with the business but less so after moving out of the marital home. She had confidence in Terry to run the business and was “not aware that compliance wasn’t happening”.
15. She had been unaware of the lack of compliance management until the visit from DVSA in March this year. When she heard what had happened, she felt sick. She had been working on putting things right since then. She told me that, had she been doing her job properly, the driver infringements would have been stopped quickly.
16. She had a part time job but it was too demanding. She had resigned from it to concentrate on Blackgate (evidenced in the bundle). She needed a separate part-time job to establish her independence but it would now be one that fitted around Blackgate, not the other way round.
17. PROTECT had worked closely with her and proper policies and procedures were now in place. They had worked through the previous weekend. Her role as transport manager was now very different.
18. In response to a question from me, Mrs West accepted that she had never fully undertaken the full role of a transport manager.

### **The evidence of Terry West, Director**

19. Mr West confirmed the business and personal history.
20. He thought he had been downloading the tachographs but hadn't been doing it correctly. It was more a matter of "flicking through" the driver card analysis reports. He had been controlling the business on his own. Downloads are now weekly. Rob goes through them with Julie. He meets the garage manager every week. He had assumed that driver Parker had a CPC. The licence was his livelihood. Maintenance is 100%. It was "unfortunate" that driver Parker got stopped.
21. In response to questions from me, Mr West confirmed that he had not identified the payloads of the vehicles but left it to drivers to work out how to load vehicles such that they were legal.

### **The evidence of Robert Oake**

22. Mr Oake joined in 2008 as operations manager. He planned routes, managed H&S and described a generally professionally run business – at that time. Following the downsizing, he had left the business to work on his own. Since the January stop, he had become back involved working with Julie. The working relationship between Mr and Mrs West was now much better

### **The evidence of Barry Hood, PROTECT Solutions**

23. Mr Hood gave a candid description of the systems as they had been and the work done since. He was impressed by the efforts made by the transport manager and others in the business.

### **Closing submissions**

24. Mr Terry West told me that revocation would be devastating. Any suspension would have the same effect. The business could operate with four vehicles but not fewer. He was booked on an operator licence training course on 26 September. A follow-up audit was booked for 14 August.

### **Post-hearing evidence**

25. Mrs Julie West provided two further submissions including a schedule of unladen weights for four of the five authorised vehicles. I have taken account of all those submissions.

## CONSIDERATION AND FINDINGS OF FACT

26. The DVSA evidence was not contested. I have no hesitation in finding that all the Section 26 matters in the calling-in letter are made out.
27. This is an unusual case. The offending which the operator permitted to happen was serious. There were no proper systems to prevent it. The transport manager was absent for almost a year. Even before that, she was not undertaking the role to anything like the extent required.
28. Mr Terry West presented as indifferent to the offending. He said it was “unfortunate” that driver Parker was caught before correcting himself. He displayed an arrogant approach to the operation. He told me that the overload was the responsibility of the driver because the vehicle had a payload of 2 ½ tonne. The evidence is now that the payload is nearer 1800kg and the product being carried needed careful positioning to avoid an axle overload.
29. I must have regard to the Senior Traffic Commissioner’s Statutory Guidance and follow his Directions, unless I find grounds for not doing so. In coming to my decision, the relevant document is Number 10 and Annex 3 to that document provides a framework for decision making. Any analysis using that approach would categorise the operator’s conduct as deliberate and reckless. The starting point for action would be “severe” – revocation is clearly justified.
30. However, the circumstances before me are unusual and I do not believe that such an approach is helpful. The lack of a transport manager came about because of personal circumstances rather than any attempt at commercial gain. I turn to the helpful questions posed by the Upper Tribunal to assist Traffic Commissioners in determining whether a licence should continue. The efforts made for the public inquiry and the determination shown by Julie West suggest that the answer to the “Priority Freight”<sup>1</sup> question of how likely is it that this operator will, in future, operate in compliance could, with support, be “likely”.
31. So I turn to the second question, the “Bryan Haulage” question: is the conduct such that the operator ought to be put out of business? This is an operator without a long history of non-compliance and with a transport manager demonstrating real commitment. I answer the Bryan Haulage question in the negative.
32. Mr West’s approach to answering the questions on the impact of regulatory action is unhelpful. It is very easy to assert gloom and doom. No supporting evidence is provided. The assertion that at least four vehicles are necessary for a viable operation flies in the face of only three vehicles being operated on the night before the inquiry. I will therefore make my own judgement. If it is wrong, Mr West has only himself to blame for the lack of flexibility in his submissions and the total lack of accompanying evidence. Whilst I let the licence continue, the lack of a transport manager for such a period of time allowing serious road safety significant offending requires significant regulatory action.

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<sup>1</sup> Appeal 2009/225 to the Transport Tribunal

## UNDERTAKINGS


33. In making the decision I do to allow the licence to continue, I rely upon the following undertakings which I require the operator to accept to be attached to the licence with immediate effect:

- An audit shall be conducted by a competent independent person by 31 December 2018 and thereafter annually. The scope of the audit shall include systems for the management of maintenance, driver licencing, drivers hours and working time and the role of the transport manager in line with the requirements of EU Regulation 1071/2009 and STC Guidance. The audit report will be prepared, acted upon and retained for at least 2 years. A copy of the report together with the operator's plans for implementing any recommendations is to be received by the Office of the Traffic Commissioner, Jubilee House, Croydon Street, Lawrence Hill, Bristol, BS5 0GB by 14 January 2019.
- The transport manager Julie West will keep a detailed diary of all time spent on transport manager duties, including the nature of the duty and the outcome. It shall be provided to DVSA or OTC on demand.

## DECISION

34. Pursuant to findings under Sections 26(1)(c)(iii) and 26(1)(f) of the Act, licence OH1008122 is curtailed to three vehicles from 6 August 2018 until 31 August 2018. Thereafter, it is curtailed to four vehicles indefinitely. The operator can apply for the curtailment to be removed in January 2019.

35. The good repute of transport manager Julie West is severely tarnished but not lost.



**Kevin Rooney**  
**Traffic Commissioner**  
**13 July 2018**