



**WSG TRANSPORT LTD**

**LICENCE NUMBER OK1056053**

**TRANSPORT MANAGER – WILLIAM PHIPPS PUCKNELL**

**GOODS VEHICLES (LICENSING OF OPERATORS) ACT 1995**

**TRAFFIC COMMISSIONER'S DECISION**

**Decision**

1. Pursuant to adverse findings under Section 26(c)(iii), (ca), (f) and (h) of the Goods Vehicles (Licensing of Operators) Act 1995 and Section 27(1)(a) of the 1995 Act, WSG Transport Ltd no longer meets the mandatory requirements of good repute and professional competence as required by Section 13A(2) of the 1995 Act. Accordingly, I revoke Licence OK1056053 with effect from 23:45hrs on 5 September 2018.
2. WSG Transport Limited and its Director, Mr William Phipps Pucknell, are disqualified from holding or obtaining an Operator's Licence or being involved in an entity that holds or obtains such a Licence in Great Britain, pursuant to Section 28 of the Goods Vehicles (Licensing of Operators) Act 1995 for a period of 2 years with effect from 23:45hrs on 5 September 2018.
3. Upon a finding that Mr William Phipps Pucknell no longer satisfies the requirements of Section 13A(3) of the Goods Vehicles (Licensing of Operators) Act 1995 to be of good repute in accordance with Schedule 3 of the said Act and a finding that he is unfit to manage the transport activities of an undertaking, Mr William Phipps Pucknell is disqualified from acting as a Transport Manager on any Licence in a Member State for a period of 2 years with effect from 23:45hrs on 5 September 2018, pursuant to Article 4 of Regulation EC/2009. No rehabilitation measures are set at this time but Mr Pucknell has liberty to apply for further information in future.

**Background**

4. The Operator and Transport Manager appeared before me at a Public Inquiry in the Tribunal Room in Eastbourne on 3 July 2018, as further non-compliance was reported after a history of interventions. Mr David Pojur of Counsel represented both parties. Driver & Vehicle Standards Agency ("DVSA") Vehicle Examiner John Terry and Traffic Examiner Neil Rossiter appeared as witnesses. At the conclusion of the hearing, I confirmed that a written decision would issue shortly. A separate decision has already been issued in relation to the linked driver conduct hearing.

## **Approach**

5. Mr Pucknell is the sole director of WSG Transport Limited ('the Operator'). There is clear and consistent case law from the Upper Tribunal that I am entitled to treat the conduct of the sole director effectively as the conduct of the Limited Company and repute or fitness is determined accordingly. Such an approach has received approval from the appellate tribunal on a number of occasions, as recently as 2013/008 Vision Travel International Limited and T2013/61 Alan Michael Knight.
6. Prior to concluding this decision, I have refreshed my memory of the Public Inquiry bundle, the Senior Traffic Commissioner's Statutory Guidance and Statutory Directions and relevant case authorities.
7. I do not set out all the evidence here, as it is a matter of record. The material evidence relevant to my findings is set out below.

## **Consideration and findings**

8. The Operator and Transport Manager's history is set out in the comprehensive case summary at pages 4, 5 and 6 of the Public Inquiry bundle. In summary, the Operator was at Public Inquiries in 2009, 2011 and 2012. On each occasion, regulatory action has been taken on the Licence. In 2016, a DVSA Traffic Examiner conducted an investigation, the outcome of which was also 'unsatisfactory'. A formal warning letter was issued 'in office' (p.128 of the bundle). That letter makes it clear that any future non-compliance may result in a further Public Inquiry.
9. In July 2017, DVSA stopped the Operator's driver, Mr Christopher Kent. The trailer identification plate was different to the tractor unit by one digit. As a result of that stop, the Traffic Examiner noted that a restriction on his driving licence prevented him from driving the vehicle combination in question and that he had not completed the requisite hours for his Driver Certificate of Professional Competence ("CPC"). Further, the vehicle was out of its 2-year tachograph calibration. At the time of the roadside encounter, the calibration was nearly a month late. On the face of it there appeared to be a period where Mr Kent had driven without his card in the head. Mr Kent subsequently produced evidence that he had been driving another vehicle specified by WSG Transport Ltd at that time. The Operator was aware of the problem as another driver had to collect the vehicle (due to the DCPC issue, the driver licence issue became apparent later).
10. In interview under caution in November 2017, Mr Pucknell, on behalf of W S G Transport Ltd, admitted that he had not understood the 102 restriction on Mr Kent's driving licence. Further, he had not checked the database to ensure that Mr Kent had his driver qualification card. Mr Pucknell admitted he was aware that the vehicle was out of calibration on the day in use and it was poor judgement that he permitted use of the vehicle. A check of the systems at the time of the interview showed they were generally satisfactory but advice was given on more robust driver licensing checks and checking driver CPC cards. At that time drivers hours and tachograph records were checked by a third party transport consultancy.
11. On 8 February 2018, a DVSA Vehicle Examiner attempted to conduct an unannounced maintenance investigation. When he attended one of the listed operating centres in Chatham Dockyard, there was no evidence of WSG Transport Ltd. When he asked around no-one seemed to be aware of the Operator. Accordingly, a pre-arranged investigation took place on 2 March 2018. In summary, the Preventative Maintenance Inspection ("PMI") sheets were out of date: IM1 and 58 were absent and there was no provision for brake testing and tyre checks. Tyre changes are done externally, but there was no evidence of a re-torque procedure. The driver defect sheets did not always have defects shown as rectified or the vehicle then signed off as fit for purpose. There was no evidence of any system audits. The Examiner was also concerned at the Prohibition and MOT failure rate. Advice was given on the shortcomings, including reference to the Guide to Maintaining Roadworthiness.

12. The Call-In Letter dated 25 May 2018 required the Operator to bring to the Public Inquiry on 3 July 2018: (i) the regular safety inspection records for the last 12 months, (ii) the last 3 months driver daily defect reports, (iii) evidence of its systems ensuring compliance with the drivers hours and tachograph legislation and (iv) evidence of training or disciplinary action received by drivers and managers. The Operator failed to bring the records for six vehicles which had been operated within the period, including one vehicle which was specified on the Licence on the hearing date – YY10BZF.
13. In evidence, Mr Pucknell said that he did not realise he had to bring the records of vehicles which had been sold, even though the terms of the Call-In Letter are clear. In relation to the vehicle still specified on the Licence, Mr Pucknell's evidence was even more disappointing. Although the Operator specified the vehicle on 26 April 2018, Mr Pucknell has never seen a first use inspection or indeed any documentation in relation to it. The vehicle is never kept at one of the specified Operating Centres. Mr Pucknell referred to one of the customers using the vehicle with its own driver for a couple of days. Thereafter YY10BZF is said to have been and remained, as at 3 July 2018, parked up at the customer's premises. The vehicle is on the Isle of Grain. Mr Pucknell says he drives past every day and the vehicle is there. He also tells me that the vehicle does not have a WSG Transport Limited disc in the window even though a disc remains issued (disc number 599195).
14. The vehicle has been permanently parked away from this Operator's authorised operating centres. The Operator and Transport Manager have no control over it. YY10BZF could have been used at any time by that customer. I arranged for my clerk to remove the vehicle from the W S G Transport Ltd Licence during the hearing. **Further, pursuant to Regulation 28 of the 1995 Regulations, I direct that the vehicle disc is to be returned to and received by the Office of the Traffic Commissioner, Ivy House, 3 Ivy Terrace, Eastbourne BN21 4QT via a form of tracked delivery by no later than 18 July 2018.**
15. The maintenance records actually produced for the hearing were equally disappointing. The nominated maintenance contractor's PMI sheets are still not current. Further, there is still, at best, a haphazard approach to brake testing. The arrangement does not even meet the minimum standard set out in the Guide to Maintaining Roadworthiness. Apart from one occasion, of the 6 vehicles checked, only 1 had a roller brake test in the same week as a PMI since the beginning of the year. The only other roller brake tests were on 2 vehicles because a MOT happened to be due. Further, for 1 vehicle there was an MOT but not a PMI sheet and therefore it appears that a PMI was missed. On all other occasions, the vehicle had no recorded metered brake test. Mr Pucknell told me that for some time the nominated contractor had been unable to drive due to ill health and therefore the vehicles would not even have had a road test. Some of the vehicles had PMIs with a different contractor due to that ill health. Those PMI forms were current and account for the one inspection with the same week roller brake test. It should also be noted that two of the Operator's vehicles had MOTs in 2018, both after the Vehicle Examiner's visit and both were fails. The only positive is that the 6 vehicles currently in the Operator's control all have roller brake tests on 30 June 2018, in readiness for the hearing.
16. Upon questioning by me, it was clear that Mr Pucknell had not taken on board the Guide to Maintaining Roadworthiness or adopted an enquiring mind to the failures that had been pointed out to him. It has long been a requirement to demonstrate Operator Licence compliance through a proper audit trail. Instead, by way of example, Mr Pucknell relies on bad luck and inconsistencies with different 'rolling roads' in terms of MOT failures etc. This is an outdated sentiment that has no place in the Public Inquiry room. The fact is that this Operator's compliance is well below the national average, thereby discounting any suggestion of bad luck or inconsistencies in the figures.
17. In terms of evidence of its systems for ensuring compliance with the drivers' hours and tachograph legislation, the Operator brought evidence of driving licence checks but no other physical evidence. Driver and vehicle raw data was on his laptop but that cannot be

transferred or read by a Traffic Examiner sitting in a Public Inquiry room. Mr Pucknell arranged for data to be forwarded from the third party Transport Consultancy. When the Traffic Examiner received the e-mailed data, it transpired that analysis arrangements had finished at the end of January 2018. It follows that I have no current evidence of compliance with the drivers hours and tachograph regimes. The Traffic Examiner was able to ascertain from the data that 13 July 2017 was not the only date FJ60AXM was used with an out of calibration tachograph. I was also not provided any documentary evidence of training or disciplinary procedures, only the oral evidence of Mr Pucknell (who suggests zero infringements from 1 February 2018). There was no evidence of monitoring, auditing or tool box talks. Indeed, there was virtually no evidence that DVSA advice has been taken on board across most of its systems.

18. Mr Kent continued to drive this Operator's vehicles until 10 November 2017. Mr Kent gave evidence at the Public Inquiry as well as in his Driver Conduct Hearing. Mr Kent was clear and unwavering that he left on 10 November 2017 because he was uncomfortable with the operation by that time. Mr Kent told the hearings (unprompted) that he worked for Mr Lawrence not WSG Transport Limited. He saw Mr Pucknell as more of a transport manager/supervisor. This was the same for all 3 of the vehicles he drove during the relevant period. He said that Mr Pucknell told him to say he worked for WSG Transport Limited, if stopped by DVSA.
19. Mr Pucknell insists that he dispensed with Mr Kent's services when he did not make himself available for Licence and driver CPC checks. Mr Pucknell told the Inquiry that he was aware of issues with Mr Kent's driver CPC and Licence restriction in September or October 2017. When asked by his Counsel why Mr Kent drove thereafter, Mr Pucknell simply said that he was not aware Mr Kent had driven the artic again. In interview under caution on 27 November 2017, Mr Pucknell said that '*....when he approached me for a job, he was driving a class one*' (page 67 of the hearing bundle) and '*....he is now restricted to class two (C) vehicles only*' (page 68 of the bundle). From the above evidence, Mr Kent did not approach Mr Pucknell for a job and Mr Pucknell made no mention of having dispensed with Mr Kent's services during interview under caution. Mr Kent was open from the first moment and spoke of the arrangement with S Lawrence (Crushing Contractors) Limited without prompting. He also proffered his driver card to prove that he had continued to drive on the W S G Transport Ltd Operator's Licence after Mr Pucknell originally suggested in oral evidence. I prefer the evidence of Mr Kent. Despite the offences committed, from observing Mr Kent and listening to his evidence, I found him to be a credible witness. The same cannot be said of Mr Pucknell whose evidence was unconvincing and undermined by the information previously he supplied to DVSA.
20. This brings me to the question of who is actually operating some or all of these vehicles driven by Mr Kent. In March 2017, an application by S Lawrence (Crushing Contractors) Limited was withdrawn and Mr Pucknell was due to be the Transport Manager. Mr Pucknell told me that Mr Kent was 'self employed'. There is an arrangement whereby Mr Lawrence sources and pay drivers on 'his' contracts. The driver costs are deducted from the invoice from WSG to Mr Lawrence. As a matter of law, the starting point is whoever contracts with/pays the drivers, is who they are *de facto* responsible to (including disciplinary matters). Where drivers are not PAYE then trouble must be taken to ensure that effective control is demonstrated, as per 2004/426 EA Scaffolding, 2004/255 M Oliver. Mr Kent was clear that he worked for Mr Lawrence.
21. In evidence, Mr Pucknell confirmed that 2 other drivers until very recently had been subject to a similar arrangement with another customer. In terms of 'Midland Steel' (now Errys Transport Limited), one driver is not paid by W S G Transport Ltd or Errys but by the brother of the director. In these modern times of stable establishment and clear guidance from the Senior Traffic Commissioner on legal entities, control and repute e.g paragraph 48 of SGSD no. 1), it is wholly unacceptable for such nefarious arrangements. Mr Pucknell claims

ignorance but I remind myself of the Upper Tribunal in 2012/030 MGM Haulage & Recycling Services Ltd that all public advice and guidance becomes deemed knowledge. Further, a director exercising his statutory duty of independent judgement, reasonable care, skill and diligence, as per sections 173 and 174 Companies Act 2006) should not be declaring ignorance on such fundamental aspects of the business. I stop short of making a finding of 'fronting' as defined in 2012/071 Silvertree because this aspect evolved as a result of Mr Kent and Mr Pucknell's oral evidence. As a result, I do not think that the evidence is sufficiently cogent for such a serious allegation. However, the arrangements are incompatible with the transparent requirements of the Operator Licensing regime of ensuring that the 'control' is at all times with the Operator, as per the test in E A Scaffolding above.

22. From observing Mr Pucknell and listening to his evidence, I did not find him credible or compelling witness either as an Operator or a Transport Manager. I am asked to accept his oral evidence in terms of the extra steps that he has taken since the Traffic Examiner and Vehicle Examiner investigations. However, prior assurances given to Traffic Commissioners and DVSA Examiners over the years were not followed through or maintained. This is so as recently as 2018. I remind myself of the helpful guidance in 2015/040 Tasci Gwyned: *It must be borne in mind that, for the regulatory scheme to achieve its purpose, relevant information needs to be made available to the regulator. Much of that information can only realistically be produced by the entity or person called-up to the public inquiry. It must, therefore, in principle be open to a Traffic Commissioner to make adverse findings about good repute in the light of an unreasonable failure to supply records that a Commissioner has precisely and reasonably requested or 'required'*. It follows, that I can only give limited weight to such oral where there is a lack of corroborative evidence. In reality, Mr Pucknell ceased a satisfactory external tachograph analysis arrangement; he had a few discussions with his maintenance contractor and talks of maybe doing another refresher course (the last one was in 2012). Roller brake tests only happened days before the hearing.
23. The Upper Tribunal helpfully set out the marker in 2009/225 Priority Freight Limited & Paul Williams that *'Promises are easily made, what matters is whether these promises will be kept: actions speak louder than words'*. I remind myself of the clear guidance set out by His Hon. Michael Broderick, Principal Judge for Traffic Commissioner Appeals in NT/2013/82 Arnold Transport & Sons Limited *'It is important that operators understand that if their actions cast doubt on whether they can be trusted to comply with the regulatory regime they are likely to be called to a Public Inquiry at which their fitness to hold an operator's licence will be called into question. It will become clear, in due course, that fitness to hold an operator's licence is an essential element of good repute. It is also important for operators to understand that the Head of the TRU is clearly alive to the old saying that: "actions speak louder than words", (see paragraph 2(xxix) above). We agree that this is a helpful and appropriate approach. The attitude of an operator when something goes wrong can be very instructive. Some recognise the problem at once and take immediate and effective steps to put matters right. Others only recognise the problem when it is set out in a call-up letter and begin to put matters right in the period before the Public Inquiry takes place. A third group leave it even later and come to the Public Inquiry with promises of action in the future. A fourth group bury their heads in the sand and wait to be told what to do during the Public Inquiry. It will be for the Head of the TRU to assess the position on the facts of each individual case. However it seems clear that prompt and effective action is likely to be given greater weight than untested promises to put matters right in the future.'*
24. When I pose the question, helpfully suggested in Priority Freight: how likely is it that those before me will, in future, operate in compliance with the operator's licensing regime, the answer must be that I cannot satisfy myself on balance that it will be with Mr Pucknell due to failure to sustain compliance and exercise effective control of the transport operations, over the years. The then Transport Tribunal said in 2011/31 Barry Flowerdew trading as Auto Village Limited said that a line needs to be drawn at some point. I therefore turn to the question *'is the conduct of the operator such that the operator ought to be put out of business'* as per 2002/217 Bryan Haulage No.2 in my judgement the answer is 'yes'. By reference to Annex 3 of the Statutory Guidance and Statutory Direction Document no. 10 on the Principles

of Decision Making, the starting point must be SERIOUS to SEVERE. When looking at the negative features balanced with the limited positives, that is where the case remains. When I pose the question whether other operators expect me to remove the Operator from the system, I am satisfied on balance they would say “yes”. Whilst the proportionality principle requires Traffic Commissioners to make decisions, which are commensurate with the merits of the case the decision must focus on the impact to road safety and fair competition that flow from the factual findings, regardless in which order I pose the questions above.

25. When I consider the question is revocation disproportionate in the circumstances of this case the answer is ‘no’. Revocation is not disproportionate where, in the absence of any objective justification and excuse, there have been long term, sustained, repetitive deficiencies: 2009/410 Warnerstone Motors t/a The Green Bus Service. Accordingly, I have reached the decisions set out in paragraph 1 above.

26. I have reminded myself of the helpful guidance on disqualification from the Upper Tribunal set out starting at paragraph 54 of the Statutory Guidance and Statutory Direction Document no. 10 on the Principles of Decision Making:

*Disqualification is a potentially significant infringement of rights<sup>69</sup> and the Upper Tribunal has indicated that whilst there is no ‘additional feature’ required to order disqualification it is not a direction which should be routinely ordered.<sup>70</sup> There may be cases in which the seriousness of the operator’s conduct is such that a traffic commissioner may properly consider that both revocation and disqualification are necessary for the purposes of enforcing the legislation.<sup>71</sup> The provisions are in general terms, consistent with the concept of deterrence, but assessment of culpability and use of words such as penalty should be avoided. The case law indicates a general principle that at the time the disqualification order is made that the operator cannot be trusted to comply with the regulatory regime and that the objectives of the system, the protection of the public and fairness to other operators, requires that the operator be disqualified.*

27. The Operator, through the conduct of Mr Pucknell has been afforded many chances over years. The current assessment of compliance as at 3 July 2018 and the deficiencies in control, knowledge and approach in terms of compliance are an affront to the hard working legitimate industry and pose a real risk to road safety. In my judgement, Mr Pucknell needs to be removed from the industry for a period commensurate with those failings. Accordingly, I have reached the decision set out in paragraph 2 above.

28. The failings and concerns set out above are equally apposite in relation to Mr Pucknell as a Transport Manager. He has failed to exercise continuous and effective management of the transport operations, despite being afforded a number of chances by previous Commissioners. The role of the Transport Manager is a key one and where there the sole director is also the transport manager extra diligence is required. That was patently missing here as a result of which road safety has been put at risk and fair competition impugned. I have not set rehabilitation measures at this time, as it is not just Mr Pucknell’s knowledge, which is deficient. I have concerns about his integrity and candour, which is unlikely be remedied by time spent in a training room.



**Miss Sarah Bell**  
**Traffic Commissioner**  
**London & South East England**  
**9 July 2018**