

TRAFFIC COMMISSIONER FOR SCOTLAND

GOODS VEHICLES (LICENSING OF OPERATORS) ACT 1995

GSR DISTRIBUTIONS LTD T/A SPICEWAY – OM1039823

PUBLIC INQUIRY HELD AT EDINBURGH ON 3 JULY 2018

DECISION OF THE TRAFFIC COMMISSIONER

Background

1. GSR Distributions Ltd trading as Spiceway of 201 Glasgow Road, Rutherglen, G73 1SU, (hereinafter “Spiceway”) has held a restricted goods vehicle operator licence since November 2004 and has authorisation for 5 vehicles. The sole director and owner of the business is Mr Saeed Hussain.
2. Spiceway has been at Public Inquiry in 2007, 2014 and March 2018. Following the March 2018 Inquiry, I issued a written decision dated 20 March 2018. That decision should be referred to for its terms and is held repeated herein *brevitatis causa* (lawyer’s words for as if fully repeated in this document).
3. By that decision of 20 March 2018, I suspended Spiceway’s licence for the month of April 2018. I did not revoke the Spiceway licence because I was given assurances by Mr Hussain and also because I was offered the involvement of Mr Allan Campbell to assist and support the operator in the direction of sustaining full compliance.
4. DVSA reported to my Office that on 4 April 2018 and again on 16 April 2018 prohibitions had been issued to a vehicle VH67 VBK found to be overloaded when carrying goods for Spiceway. These overloads were during the period of suspension of the licence and suggested that the operator was overloading light goods vehicles when the heavier vehicles were not available.
5. On 4 April 2018, the vehicle was at Perth en-route to Inverness and driven by Stefan Fehete. On 16 April 2018, the vehicle was a Perth en-route to Elgin and driver by Mr Daniel Scurt.
6. In light of these prohibitions I directed that Spiceway be called to a Public Inquiry to be held at Edinburgh on 3 July 2018. The call up letter, dated 25 May 2018, set out what was required of the operator in preparing for and answering the concerns of my Office. That letter can be referred to for its terms.

Public Inquiry

7. The Public Inquiry duly convened on 3 July 2018 at Edinburgh. Those present were Mr Hussain, director, accompanied by General Manager Mr James O’Reilly. There was no legal representation, by choice.
8. On 26 June 2018, my Office received an email thread from Mr Allan Campbell. That thread was copied to Mr Hussain when he arrived at the Inquiry. It transpired during the Inquiry that Mr Hussain was unaware of the difficulties Mr Campbell had in engaging with his company. Mr O’Reilly tried to make out he had not seen Mr Campbell’s email to him of 18 June 2018. He did not necessarily open all emails. He had interpreted my Inquiry decision that they did not need to deal with Mr Campbell.

9. I quote Mr Campbell's email of 26 June:

"I write in respect of the attached document for GSR Distributions, licence number OM1039823. Following a written decision to suspend the licence for the month of April I advised Mr Reilly to focus upon ensuring resource and suitable equipment were in place to allow the business to function during suspension and I would arrange to visit early May to review the licence undertakings as agreed.

"Whilst in the vicinity I visited the operating centre [unannounced] on 25th April to be informed via a door entry system that 'we do not have a Jamie Reilly General Manager working here'. I again visited unannounced on 8th May and did manage to locate Mr Reilly outside the premises. It appears the mis-communication at my earlier visit was due to a new member of staff. During our discussion which included my frustration regarding poor communications there again was a verbal commitment from Mr Reilly as to my 'important involvement' and I was asked to contact him the following week to arrange when to complete the review. Since that time I have had only one successful contact attempt via telephone with Mr Reilly on 30th May, again I was asked to contact him the following week. Several communication attempts by text and/or email are unanswered.

"I have written an email to Mr Reilly, 18th June, setting out my position as below:"

10. In his email to Mr O'Reilly of 18 June, Mr Campbell wrote:

"Good evening James, I hope this email finds you well.

"You will be aware that since the Inquiry of 5th March and following the April [licence] suspension I have been trying to arrange a visit to review and plan steps to ensure the business is compliant with the licence undertakings'.

"Prior to and since our last telephone conversation on 30th May I have tried unsuccessfully to call, email and text you regards support I can provide for GSR in this matter [you did mention that the company had been called to a further Inquiry resultant from two overweight vehicles].

"I am committed to assisting licence holders though believe, given that passage of time, failed communications and despite assurances from yourself, that my assistance is in fact not required. Following, I will not contact you further, though should you require my assistance, be assured my phone is always on".

Productions

11. The operator brought productions to the Inquiry to show that during the period of suspension they had hired in additional vehicles which they had insured; that they had hired additional drivers whom they had to discipline; that they had routed the Inverness and Elgin deliveries into 2 stages but, on the occasions of the prohibitions, the loading forklift operator had colluded with the drivers to create one [overloaded] journey rather than 2 journeys. They also brought quotes dated 21 and 23 May 2018 from Volvo and DAF for a new 19t/18t truck. They had not proceeded with any order given the imminence of this Inquiry.

Evidence for the operator

12. Given that this licence is a restricted licence and given that Mr Hussain is the person with legal responsibility for the licence my concern was to take evidence from him. He had brought Mr O'Reilly and he too gave evidence.
13. Distilled, the essence of Messrs Hussain and O'Reilly evidence was that the 10 days notice which they had of the suspension of the operator licence placed enormous pressures on them and the business, necessitating them as individuals working long hours. They could not personally oversee everything. They had to hire extra vans and drivers. They had scales for the forklift driver and Mr O'Reilly had route plans for the days on which the prohibitions were issued. On these days there were to have been 2 sequential journeys but the forklift driver and van drivers took the full day's loads in one journey and were overloaded. Neither Mr Hussain nor Mr O'Reilly instructed that this be done. Disciplinary action was taken.
14. Mr Hussain said he had not seen the emails from Mr Campbell until handed the copy at the Public Inquiry. He had given Mr Campbell his business card but Mr Campbell did not contact him. The email had gone to Mr O'Reilly's Spiceway email address and not to the generic Spiceway address. Thus, he had not seen nor had access to it. Mr O'Reilly attempted to say he had not seen it, had not opened it and he could show me his phone to prove such. [I declined to engage with that as nothing would have been "proved"]. Mr O'Reilly said he had interpreted paragraph 21 as their not needing to use Mr Campbell.
15. Mr Hussain concluded his evidence by deeply regretting and apologising for the 2 overloading issues which happened during a period of great stress. It was not intentional but something had slipped and never again. He would personally undertake to give instructions to Mr Campbell to engage with him if there were any issues. He had not asked Mr O'Reilly for any reports from Mr Campbell. Now he will engage personally with Mr Campbell.

Consideration of the evidence and my decision

16. Given the Public Inquiry history of this licence, revocation is a clear option for me. It is astonishing that the company has not used the logistics expertise of Mr Campbell and that he and they effectively stood him down during the period of suspension. The experienced eye of Mr Campbell would have spotted the risk that there would be been circumvention of the 2 loads journeys. That he was unable to gain entry to the premises reflects on the operator and on him. He should have contacted Mr Hussain for no consultant brought in, in context of a Traffic Commissioner's Inquiry, should let staff deflect them. Mr O'Reilly has to be severely criticised for his lack of attention or priority to Mr Campbell. Mr O'Reilly has no status given this is a restricted licence. The regulatory responsibilities lie with Mr Hussain and he cannot delegate these unless he has processes to make sure all is well. That he did not pro-actively engage with the arrangements for Mr Campbell and ensure that his business was 100% compliant reflects very badly on him.
17. Mr Hussain is willing to work with Mr Campbell and Mr Campbell's email expresses willingness to assist. Mr Campbell should be given access to all the transport related documentation and personnel and routings such that he can fully advise on total compliance.
18. I am going to hold back from revocation only because Mr Hussain was unaware that his manager had not understood the impact of my decision and had not told Mr Hussain that he had put off seeing Mr Campbell and was not engaging with him. I will mark my severe displeasure with this licence holder by reducing the authorisation from 5 to 4 vehicles without limit of time with effect from 23:59 from Friday 24 August 2018. A vehicle disc must be returned to my Office and the vehicle must be de-specified.

19. I direct that I receive by 31st August 2018 a detailed report from Mr Campbell on his engagement with the operator and the processes in place to meet all of the licence undertakings. If I do not receive such by 31 August 2018, the licence will be imperilled and revocation nigh inevitable.
20. Mr Hussain must read the licence undertakings. He must personally use these as an active checklist to secure compliance for his business. He must recognise that Mr O'Reilly cannot be relied on to secure that compliance.

Summary

21. The goods vehicle operator licence held by GSR Distribution Ltd is curtailed to 4 vehicles with effect from 23:59 on Friday 24 August 2018. Any future increase in authorisation will require a formal variation application.
22. The operator will instruct a full report from Mr A Campbell on the arrangements put in place and continuing to secure full compliance with all of the licence undertakings, such a report to be received by the Office of the Traffic Commissioner Edinburgh by no later than 31 August 2018.

Joan N Aitken
Traffic Commissioner for Scotland

13 July 2018