



**DECISION OF THE TRAFFIC COMMISSIONER
FOR THE WEST OF ENGLAND**

OH2010737

ARMADA INDUSTRIAL LIMITED

HEARD AT BRISTOL ON

14 JUNE 2018

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

DECISION

Application OH2010737 is refused under section 13 B of the Act because the applicant has not demonstrated that it is not unfit to hold an operator's licence.

BACKGROUND

1. Armada Industrial Limited made an application, submitted 12 February 2018, for a restricted goods vehicles operator's licence authorising the use of two vehicles and one trailer. The applicant suggested in correspondence that the application was to replace OH0211754 Armada Tube Ltd, having bought assets from that business following its entry into administration. The administration was not declared on the application form. No notice

was ever received that OH0211754 had entered administration. Two of the three directors of Armada Tube Ltd are directors of the applicant company.

2. Interim authority was requested and refused because I could not be satisfied as to the applicant's fitness.

THE HEARING

3. Mr Desmond Whitehouse attended for the applicant unrepresented. He told me that Armada Tube Ltd had entered a Company Voluntary Arrangement in 2014. It had been hoped to rescue the business. An option then was to close but they had decided to try to trade out of the problem. Three and a half years later, in February this year, it was clear that the credit restrictions flowing from the CVA meant that the company was not going to be successful. Armada Industrial Limited was an existing property business which had now incorporated the former activities of Armada Tube Ltd.
4. The business was steel fabrication. It employed twenty people. There were two vehicles, one 7.5 tonne that was used locally and an artic that was used for longer distances. The vehicles were new, under contract hire.
5. The start of Armada Tube Ltd's troubles began with the credit crunch in 2008. The company had been mis-sold an interest rate swap which had the effect of putting a £X Million charge in place. That coupled with the credit crunch starved the business of cash.
6. I asked about the two vehicles. Mr Whitehouse told me that the 7.5 tonne vehicle was out delivering locally. I retired briefly to confirm that no interim licence was in force. On reconvening, Mr Whitehouse accepted that the vehicles had remained in use throughout. He thought he had an interim licence. The 7.5 tonne vehicle was used daily. The artic was used two to three times a week. They were essential to the business. It was uneconomic and impractical to hire-in transport. Armada Tube Ltd entered administration on 2 February 2018; the application was submitted on 12 February 2018.
7. In relation to the missing information on the application in relation to his previous licence history, Mr Whitehouse accepted that he should have completed the form himself. A lot of paperwork came across his desk and he had obviously signed it without checking it. He had no intention of avoiding his responsibilities.

8. I asked about the quantum of debt on entry to administration. Mr Whitehouse told me that about £XX was owed. I asked whether he had a statement of affairs. He did not, so I adjourned so that one could be produced from the Companies House website.
9. On reconvening, Mr Whitehouse told me that the £XX he had referred to was additional debt that made the CVA unviable. He had overlooked the amount that was within the CVA itself as it was not on the ledger. I noted that HMRC was owed £XX. I was told that the applicant company was fully up-to-date. They ran a nice tight ship. Turnover was £X Million, down from £X Million.
10. Of the £X Million shown as owed at entry to administration, half was secured and secured creditors had received a dividend. Marcegaglia had accepted possession of a £X building in lieu of their £X debt. Bibby were now being paid and were sales invoice discounters to the ongoing business. There was likely to be nothing for the unsecured creditors, though I noted that GH Newberry and Son had been secured not unsecured as shown in the Companies House documentation.
11. In closing, Mr Whitehouse told me that the business world was very difficult. He had come through hell at the time of the administration. The lorries were run safely and legally. He had the right sort of people in the business. He had started with nothing. He recognised that the lorries were a tool of the business but were also a lethal weapon. He had been in operation for over 30 years and had learned a lot. The application was on top of everything else. He could see that it looked shoddy and he apologised. Everything was now in order.
12. I indicated that I needed to reflect upon my notes and I would issue a written decision.

CONSIDERATION AND FINDINGS

13. This is an application. The onus is therefore on the applicant to satisfy me that the statutory requirements are met. Finances have been shown and vehicles are modern and on contract. I am not aware of any other compliance issues with the applicant or the former operator. The outstanding issue is fitness. In Aspey Trucks Ltd 2010 – 49, the Upper Tribunal comments on the difference between removing an existing haulier and whether or not a new applicant to the industry met the necessary standards:

“In a case such as this, the Deputy Traffic Commissioner was not looking at putting someone out of business. Rather, he was deciding

whether or not to give his official seal of approval to a person seeking to join an industry where those licensed to operate on a Standard National or Standard International basis must, by virtue of S.13(3), prove upon entry to it that they are of good repute. In this respect, Traffic Commissioners are the gatekeepers to the industry - and the public, other operators, and customers and competitors alike, all expect that those permitted to join the industry will not blemish or undermine its good name, or abuse the privileges that it bestows. What does "Repute" mean if it does not refer to the reasonable opinions of other properly interested right-thinking people, be they members of the public or law-abiding participants in the industry?"

14. This is an application for a restricted licence. The requirement is not to be of good repute but to be not unfit. The Upper Tribunal comments on the two requirements in T/2013/07 Redsky Wholesalers:

"We do not think that fitness is a significantly lower hurdle than the requirement to be of good repute, it is simply a different requirement."

15. The following questions and answers are extracted from the application "form" (it was an online application) found at pages 5 to 17 of my brief and signed by Desmond Whitehouse on 12 February 2018:

Question	Answer
Has anyone you've named in this application (including partners, directors and Transport Managers) ever been involved with a company or business that has gone (or is going into) liquidation, owing money?	No
Has anyone you've named ever been involved with a business that has gone or is going into administration or a Company Voluntary Arrangement?	No
Has anyone you've named in this application (including partners, directors and Transport Managers) previously held or applied for a goods or PSV operator's licence in any traffic area?	No
Within the last 12 months, have you, your company or organisation, or your partners or directors purchased assets or shareholdings in any company that, to your knowledge, currently holds or has previously held an operator's licence in any traffic area?	Yes: OH0211754 ROBERT BRANTON Date of purchase 07 Jun 1994

16. Directors Desmond Woodhouse and Mark Downton were directors of Armada Tube Ltd which had entered administration with a view to entering liquidation. Armada Tube Ltd entered a CVA in 2014 and administration in February 2018. Desmond Woodhouse and Mark Downton were directors

of Armada Tube Ltd which held OH0211754. The applicant company bought the assets of Armada Tube Ltd in February 2018. These four statements made in the application are false. Mr Woodhouse admits not having checked the application form and puts this down to the pressures of the difficult period he was going through. Each false statement is a separate criminal offence under Section 39 of the Act. Each is an indication that the applicant company is not to be trusted and is therefore unfit.

17. Mr Whitehouse admits that the applicant company has continued to use the vehicles unlawfully since the entry in to administration of Armada Tube Ltd. He told me he had not known that the interim licence had not been granted. At page 18 of my bundle is the letter sent by the central licensing office to the applicant company on 16 February 2018 requesting an explanation for the failure to declare the previous licence history and other matters. In bold on the front page of the letter is the following paragraph:

“A decision on your request for an interim licence has been deferred to await your response to this letter. In the meantime, you are advised that you cannot lawfully operate goods vehicles with a gross plated weight exceeding 3.5 tonnes for the carriage of goods in connection with your trade or business or for hire or reward (even if you have already submitted an interim fee) until you are granted authority to do so and the licence documents have been issued. If you do so, and this is brought to the attention of the Traffic Commissioner, you risk having your full application refused.”

18. At page 30 of my bundle is a further letter from the central licensing office to the applicant on 21 March 2018. It is short and the fourth of four paragraphs reads as follows:

I must re-iterate that you cannot lawfully operate goods vehicles in excess of 3.5 tonnes gross plated weight on a public highway for the carriage of goods in connection with your trade or business or for hire or reward.

19. Both letters received responses and so were received and acted upon, in part at least, by the applicant. Whilst Mr Whitehouse expressed apparently genuine surprise at the lack of an interim licence, I find that he, as a statutory director, either had actual knowledge of the illegal operation or he acted recklessly in failing to establish positively that such a licence existed. Having been a licence holder previously, that recklessness identifies a high degree of fault. Between 2 February 2018 and 12 February 2018, the applicant company operated the vehicles without even making an application to do so. I find that the applicant company has

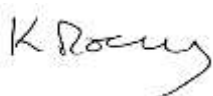
knowingly operated heavy goods vehicles without a licence, despite warnings not to do so. The guidance to which I must have regard¹ addresses this at paragraph 50:

Dishonesty and illegal operation are very serious matters. Traffic commissioners are entitled to conclude that a person does not have the required repute where they have decided to operate without authorisation (either on an interim or full licence) particularly in the face of warnings not to.

20. It is clear that the applicant company has sought to wipe away a large debt and carry on, albeit downscaled, with business as usual. £X of that debt is to the Crown and falls to be picked up by British taxpayers. A further £X is owed to Cornwall Council and so is unavailable for the provision of vital services. The applicant company has continued to operate vehicles without the authority of an operator's licence and I find that it has done so knowingly. The application form and related correspondence has contained false statements. Each of those separate findings would on its own cause me to find that the applicant company is unfit and it follows that the combination of the three failings makes such a finding inevitable.

DECISION

21. Application OH2010737 is refused under section 13 B of the Act because the applicant has not demonstrated that it is not unfit to hold an operator's licence.



Kevin Rooney
Traffic Commissioner
19 June 2018

¹ Senior Traffic Commissioner Statutory Document No. 1, Good Repute & Fitness