



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

OH2010427

LYDNEY SKIP HIRE LIMITED

HEARD AT BRISTOL ON

20 JUNE 2018

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

DECISION

BACKGROUND

1. Lydney Skip Hire Limited submitted an application on 9 February 2018 seeking authorisation for four vehicles on a restricted licence at an operating centre at Harbour Road, Lydney. The sole director is John Joseph Riley. Mr Riley declared a conviction for cultivation of cannabis for which he was sentenced to 12 years in prison on 13 September 2011. Other licensing issues were raised. Due to the seriousness of the

conviction, I proposed to refuse the application and invited the applicant to request a public inquiry which he did.

THE HEARING

2. Mr John Riley appeared for the applicant represented by Paul Loughlin, Stephenson Solicitors LLP. Mr Loughlin provided a statement and supporting bundle in advance for which I was grateful and which allowed me to focus the hearing on three aspects, how the company had functioned without a licence, intentions for compliance systems and the conviction.
3. Mr Riley told me that the business sub-contracted the movement of skips and the muck-away work. This was problematic as the subcontractor would try to take the work themselves at a lower price or would be unreliable. He had invested significantly in the business, spending some £XX on its purchase, on new equipment and on training, amongst other things. He planned a significant expansion in the business and the investment was his own and that of his family. The money had come from property and was not linked to the convictions. He had already added a further 250 skips since acquisition.
4. The transport work was currently contracted out to Biffa (RORO removal), Crown Hill of Caldicot for muck-away and Batemans Skips in Bristol, amongst others. There were other large machines on site and I was satisfied that this would account for the fuel payments on the bank statements.
5. Transport Consultant Graeme Robinson had advised on compliance systems and would be retained to install and establish them if the licence was granted. I was offered an undertaking for a future compliance systems audit.
6. The primary conviction was for cultivation of cannabis and there were associated firearms convictions. Mr Riley told me that he had a 50-acre yard which was rented out. It included a storage container park which was leased from September 2010 until the date of his arrest. He was fully aware that the tenant was cultivating cannabis and paid an enhanced rent. He was the land-owner, he knew what was happening, it was his mistake. When the police searched the grounds they found firearms. His staff were working on site at the time.
7. Part of Mr Reilly's rehabilitation was to move away from London and his previous associates, hence the move to Lydney. He did not want to put his trust in employees. Everything was now in his name. Everything stopped

- with him. When he wasn't on site, he could monitor the site through CCTV. He would not employ anyone with any criminal conviction.
8. All proceeds of crime orders arising from the conviction had been satisfied. Mr Riley had owned land near the A13 in Essex. This had raised £XX at auction, significantly less than its true potential due to waste contamination that occurred whilst he was in prison.
 9. Mr Riley was still engaged in community work. He was on licence until 2023. He could have set up a company with a family member as director which would have been much easier but he was determined that everything would be transparent from the outset. He would, if I thought it appropriate, undertake a transport manager CPC course and exam.
 10. I indicated that I needed to reflect upon my notes and I would issue a written decision.

CONSIDERATION AND FINDINGS

11. Immediately following the hearing, the applicant submitted invoices showing the work contracted out. I am fully content that there has been no unauthorised use of goods vehicles. The general compliance matters are addressed by the involvement of Mr Robinson and I am offered an undertaking to verify the systems at a point in the future.
12. The only outstanding point is the conviction. This is a restricted licence. Were this an application for a standard licence, the Upper Tribunal has provided relevant guidance. In *T/2012/034 Martin Joseph Formby*, it said the following:

In our judgment the reasonable opinion of right-thinking people, whether members of the public or law-abiding participants in the industry, would be that it is still too soon to grant the Appellant an operator's licence. We agree with the Deputy Traffic Commissioner that it was not possible to disregard these offences under paragraph 5(2)(b) of Schedule 3 to the 1995 Act. Nor would it have been right for the Deputy Traffic Commissioner to conclude that a rehabilitation measure or other measure having similar effect had been taken, pursuant to Article 6.3, at a time when the Appellant is still serving the 14 year sentence. It seems to us that the rehabilitation measure or other measure having similar effect can only be said to have been 'taken' once a sentence has been served in its entirety or the measure has been completed in some other way.

13. However, that relies on the European legislation and the requirement of repute rather than not to be unfit. The Upper Tribunal has said, 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.”

14. The difference is important. In this case, rather than the serious conviction leading to a mandatory loss of, or failure to establish, good repute, I have discretion. In exercising that discretion, I am guided by the primary purposes of the legislation, those being fitness to hold a licence, road safety, fair competition and protection of the environment.

15. Mr Riley has demonstrated that he has invested significantly in qualifications relevant to his waste carrying business. I am entitled to infer from that a serious and conscientious approach to those statutory responsibilities and that is a significant positive feature relating to the protection of the environment. The applicant has also invested in transport consultant support to establish appropriate compliance management functions and has offered an audit. This is positive for both road safety and fair competition.

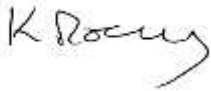
16. Guided by the approach of the Upper Tribunal in Redsky, the question I have to ask myself is this: “is this an applicant I can trust to be compliant”? That is possibly the most difficult question to answer, especially at application stage when there is no relevant compliance history. The conviction for serious offences is clearly a significant negative feature.

17. Mr Riley declared the conviction on the application form. I find that he has been candid throughout. As he said himself, he has not sought to hide behind a “front”. Indeed, he has done quite the opposite. He has said, “look, this is me. This is what I have done wrong. This is why it happened. And this is what I have done since to rehabilitate myself.” That is supported by relevant investment in learning activities and by a number of relevant character witness statements.

18. Having conducted a balancing exercise, I find, quite clearly, that this is an applicant I can trust to comply in the future. I make that finding without finding it necessary to record any additional undertakings on the licence, though I do recommend to every operator to have regular external audits of compliance systems.

DECISION

19. Application OH2010427 is granted as applied for, all statutory requirements having been met.

A handwritten signature in black ink, appearing to read "K. Rooney".

Kevin Rooney
Traffic Commissioner
20 June 2018