



**BKG TRANSPORT LIMITED: OH0206924
WHITEPARISH TRANSPORT LIMITED: OH0209378**

TRANSPORT MANAGER TERRY KEVIN GOVER

PUBLIC INQUIRY IN BRISTOL

4 JUNE 2018 and 21 JUNE 2018

DECISION

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

Pursuant to findings under Sections 26(1)(h), 27(1)(a) and 27(1)(b) of the Act, licence OH0209378, Whiteparish Transport Limited, is revoked with effect from 23:59 hours, 24 August 2018.

Pursuant to findings under Sections 26(1)(h), 27(1)(a) and 27(1)(b) of the Act, licence OH0206924, BKG Transport Limited, is revoked with effect from 23:59 hours, 24 August 2018.

On a finding of loss of repute as a transport manager, Terry Kevin Gover is disqualified from acting as such in any member state until rehabilitated. Rehabilitation requires that a period of two years passes and that he sit and pass the transport manager CPC qualification.

Terry Kevin Gover, Anthony Kenneth Gover, Whiteparish Transport Limited and BKG Transport Limited are each disqualified, pursuant to Section 28 of the Act, from holding or obtaining an operator’s licence or being involved in the transport operations of an entity that holds or obtains such a licence for a period of 2 years from 24 August 2018.

BACKGROUND

1. BKG Transport Limited is the holder of a Standard International operator’s licence granted on 3 March 1993 authorising the use of six vehicles and eight trailers. Six vehicles are recorded as in possession. Whiteparish Transport Limited is the holder of a Standard International operator’s licence granted on

18 December 1995 authorising the use of six vehicles. Six vehicles are recorded as in possession.

2. The address of establishment and the operating centre of both companies is “Ferns”, Common Road, Whiteparish, Salisbury. The directors of both companies are Terry Kevin Gover and Anthony Kenneth Gover. The transport manager of both is Terry Kevin Gover.
3. BKG Transport Limited was called to public inquiry in November 2011. The licence was curtailed from ten vehicles to six. BKG Transport Limited attended a preliminary hearing on 7 March 2014. The hearing was adjourned until 15 May 2014 at which point the Deputy Traffic Commissioner decided to call the company to public inquiry. That hearing appears to have been listed for 17 September 2014. The company requested an adjournment due to the transport manager having a pre-booked holiday. It appears the adjournment was granted but the case was never relisted. The staffing in issues leading up to that time in OTC Bristol are public knowledge¹ and have now been remedied.
4. BKG Transport Ltd was called to an interview with my Senior Team Leader on 3 October 2017 as a result of shortcomings identified in a DVSA maintenance investigation.
5. Whiteparish Transport Ltd submitted an application in August 2017 to increase vehicle authority from six to ten.
6. A DVSA investigation started as a result of a roadside encounter with vehicle HX05LTV on 4 April 2017. The vehicle had not been displaying an operator’s licence disc. Checks made at the time revealed that the vehicle was registered to 3TC Logistics Ltd. A telephone call was made to the operator. Mr Tony Gover told the examiner that the vehicle was being operated by BKG Transport Ltd who had acquired the vehicle in order to sell it on. The driver produced analogue tachograph records dating back to 15 February 2017 which suggested that the vehicle had been operated for longer than the one month grace period.
7. Vehicle RX12BDO was encountered by DVSA on 26 July 2017. BKG Transport Ltd had been the registered keeper of the vehicle since 1 February 2017. The vehicle was not specified on BKG Transport Ltd goods vehicle operator’s licence. It was specified on 0H0141771, Colin J Bale and Sons Limited. It was liveried as 3TC Logistics. The vehicle was subsequently specified on the BKG operators licence on 4 August 2017.
8. Vehicle WU17LVX was encountered by DVSA on 4 October 2017. The vehicle was not displaying an operator’s licence disc and was not specified on BKG Transport Ltd’s licence. The examiner spoke to the driver’s contact who was Mr Carlo Ward. He confirmed the vehicle was being operated by BKG. It was specified on the licence the following day. Analysis of the digital

¹ See, for example, page 28 of: <https://www.gov.uk/government/publications/traffic-commissioners-annual-report-2012-to-2013>

tachograph vehicle unit showed that the unit had been locked into BKG Transport Limited's company card on 27 May 2017.

9. Vehicle WA04NHX was encountered on 31 January 2018. When the vehicle was first approached, the traffic examiner noted it was displaying an operator's licence disc in the name of Whiteparish Transport Limited. The vehicle was directed to a parking bay. When inspected a few minutes later, the licence disc on display was that of BKG Transport Ltd. The examiner found the Whiteparish disc in the holder behind that of BKG. The driver said he was working for BKG, 3TC and Whiteparish Transport: "it's all under one roof". He said he was paid by BKG.
10. Traffic Examiner Andrew Dean attended the operating centre of both licensed operators on Monday, 17 July 2017. He met Mr Tony Gover who said that he had just arrived back from holiday and declined to assist with his inquiries. He said to the examiner *"why are you picking on us? Sarah Bell is looking into it as you are harassing us. We get fed up with having to dig up paperwork for you all the time"*. Traffic Examiner Dean noted in his pocket book "op unhelpful, dealing with via S99Z letter". On Monday, 18 September 2017, Traffic Examiner Dean sent a Section 99ZA production letter to Mr Anthony Gover requiring both companies to produce documents for the period 1 March 2017 to 30 May 2017 for any vehicles used by BKG Transport Limited and Whiteparish Transport Limited, as well as drivers or anyone acting on their instructions in connection with their operator's licences. Documents were required to be produced by 25 September 2017. Traffic Examiner Dean received an email on 21 September 2017 from Tony Gover. He said that he had only just received the email as he had been off sick and he would not be able to produce the documents by 25 September 2017. Mr Dean extended the deadline to 29 September 2017. On 29 September 2017, a box containing company documents from BKG Transport Ltd was delivered to DVSA's Poole office. Nothing was provided by Whiteparish.
11. Details of six vehicles were provided. Analysis of the driver data showed that a further six vehicles had been operated. Three of these were registered to BKG Transport Ltd and three to Abacus Van Hire. No data was provided for vehicle WU17LVX which had been locked to the BKG Transport Limited company card on 27 May 2017, within the period of data requested.
12. There were further issues with the documents produced. No insurance policy certificates were provided as had been requested. No tachograph digital data in raw format was provided. No tachograph printouts were provided. No hire agreements or subcontracting invoices were produced. Nothing at all was ever produced in relation to Whiteparish Transport Limited.
13. It was the view of Traffic Examiner Dean that there were significant concerns that BKG Transport Ltd, Whiteparish Transport Ltd and 3TC Logistics Ltd, which does not hold an operator's licence, had been sharing vehicles, lending licence authority and operating more than the maximum authorisation for the respective licences.
14. DVSA Vehicle Examiner David Blake conducted a maintenance investigation in relation to the Whiteparish licence on 7 February 2018. Vehicle Examiner

Blake found reasonable systems in place. However he noted that the transport manager did not have the required level of control. He supported this by stating that two vehicles were found to have expired road tax during his visit. He also felt that the transport manager should have identified the shortcomings he had found. He noted that vehicles were not having brake performance tests in line with the accepted industry practice outlined in the Guide to Maintaining Roadworthiness. Driver defect reports showed a defect with spray suppression which had been reported by the driver over two months with no rectification apparently undertaken.

15. Vehicle Examiner Blake noted that Tony Gover, director, replied to the shortcomings as Terry Gover, the transport manager, who was unwell. He further noted that the shortcomings repeated those identified during a visit to BKG Transport in June 2017. Additionally there had been a further visit to Whiteparish in December 2016 with a similar outcome.

16. These apparent widespread concerns caused me to call both licences to public inquiry on the following grounds:

Section 6 of the Act, that more vehicles were being operated than authorised;

Section 26(1)(b) of the Act, that the company had failed to notify events that affected professional competence;

Section 26(1)(c)(i) and (ii) of the Act, that drivers had incurred relevant convictions;

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

Section 26(1)(ca) of the Act, that drivers had incurred relevant fixed penalties;

Section 26(1)(f) of the Act, that any undertaking recorded in the licence had not been fulfilled, namely

- That vehicles would be kept fit and serviceable
- That vehicles and trailers would not be overloaded
- That the rules on drivers hours and tachographs would be observed
- That there would be effective driver defect reporting

under Section 26(1)(h) of the Act, that there had been a material change in the circumstances of the licence holder;

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), that the operator may not have a transport manager who is professionally competent and of good repute.

17. Mr Terry Kevin Gover was called separately to consider his repute as Transport Manager under Schedule 3 of the Act.

THE PUBLIC INQUIRY

4 JUNE 2018

18. Mr Terry Kevin (Terry) Gover, Mr Anthony Kenneth (Tony) Gover and Mr Carlo Ward attended for the operator represented by Laura Hadzik, solicitor. Traffic Examiner Andrew Dean and Vehicle Examiner David Blake attended for DVSA.

19. 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.

Preliminary matters

20. Ms Hadzik told me that Whiteparish Transport Ltd wished to withdraw the variation application to increase authority. BKG Transport Ltd had made a new application the purpose of which was to amalgamate the two businesses into one. No overall increase in authority was requested. As of today, BKG had six vehicles in possession, Whiteparish had three. They wished to invoke Schedule 4 for the application. It was not intended that more than ten vehicles in total would be operated. These were two long-standing entities, over thirty years, linked by common directors, transport manager and operating centre.

21. 3TC Logistics Ltd had no licence and made no applications. The directors were Thomas Gover and Carlo Ward; these directors were not common to the licensed entities. 3TC was a freight forwarder and subcontracted work to BKG and others. It was accepted that two vehicles had been liveried as 3TC and one vehicle had been registered to the company in error. Thomas Gover had acquired that vehicle and realised he had been mistaken to register it to the wrong company. 3TC had never operated vehicles. It was accepted that BKG and Whiteparish had no clear separation and that was why there was now a move to simplify the operation to one entity.

The evidence of Vehicle Examiner David Blake

22. Mr Blake told me that the records reviewed on the morning of the public inquiry were all fine. His concern in relation to the transport manager's control arose because of the two vehicles which had expired tax and because basic mistakes on PMIs had not been noticed. The records for all vehicles for both operators were filed together and it was difficult to separate the operations. There had been similar issues identified at all three visits. Overall there was

improvement, but minor errors persisted. The records were kept at Tony Gover's home. Mr Blake had never met Terry Gover before today.

23. Vehicle Examiner Blake confirmed to Ms Hadzik that the maintenance shortcomings in themselves caused him to recommend only a warning letter. He confirmed again that he had never met Terry Gover before today, nor had he had any correspondence with him. He had only ever met Tony Gover. He accepted that Terry may have been at the operating centre that morning and gone home early. He accepted that roller brake testing probably had been done on a quarterly basis but was not recorded. All of the maintenance visits had been prearranged but Terry Gover had never attended.

The evidence of Traffic Examiner Andrew Dean

24. Traffic Examiner Dean adopted his public inquiry statements. His intention when he visited on 26 July 2017 team to complete a Traffic Examiner Operator Report (TEOR). He had never completed one, though, as he was unable to do so. No digital data had ever been produced. He got papers from BKG but no response whatsoever from Whiteparish. He needed raw data to complete the TEOR to back-up the paper records. He was aware from the encounter history that there were drivers hours infringements. One drivers hours prohibition has been issued but no "other work" had been recorded by a driver over a period of six weeks.
25. Traffic Examiner Dean confirmed from his notebook the events of 4 April 2017. He had called the operator and spoken to Tony. The vehicle had a tax disc that was unrelated being a previous cherished transfer. He had been told the vehicle had been recently acquired to be sold. The charts showed the vehicle had been in possession for at least six weeks which was contrary to what the director, Tony Gover, had said. The V5 had been issued on 3 February 2017. He had cautioned the driver and interviewed him. He was employed by BKG who paid his tax and national insurance. He was instructed by Tony Gover. He had not used the mode switch. He thought the analogue tachograph was automatic. The driver confirmed that he loaded and unloaded the vehicle. He did not use a driver defect book but did conduct a walk round check. He paid a £50 fixed penalty and was allowed to continue once a missing record had been provided.
26. Ms Hadzik questioned whether six vehicles were specified on the licence at that time. Her analysis of VOL showed four. It was the company's position that it had faxed all vehicle updates to Leeds. As this was a fundamental point, I called a brief adjournment so that the licence records could be checked.
27. On reconvening, I confirmed that VOL records indicated that four vehicles were specified on the licence at the time of the encounter on 4 April 2017.
28. Traffic Examiner Dean confirmed that he was content from the driver's responses that BKG was the user of the vehicle on the day. Ms Hadzik handed up what I was told were copies of faxes that had been sent to Leeds adding the vehicle to the licence on 1 February 2017. I noted that the fax was not accompanied by the usual confirmation slip, also noting that it was many

years since I had last even seen a fax machine. Ms Hadzik told me that the company accepted that the vehicles had not always been specified within a calendar month. Mr Dean confirmed that there was no disc in the window 2 months after the vehicle came in to possession and that it was evident that there was no clear blue water between Whiteparish and BKG.

29. At the time of the encounter with RX12BDO on 26 July 2017, there were five vehicles specified; it would be the sixth. On 4 October 2017, WV17LVX would have been the sixth vehicle. The operator now specified everything electronically via VOL and Mr Dean accepted that was better than using faxes.
30. Mr Dean confirmed his position in relation to the visit to the operator on Monday 17 July 2017 and confirmed that the extract from his pocket book (page 39 of my BKG bundle) was accurate. He had told Tony Gover that the reason for his visit was the lack of a disc in the windscreen at the roadside encounter. On 18 September 2017, he had issued three Section 99ZA production letters, one each to BKG, Whiteparish and 3TC Logistics. He had received responses from two, BKG and 3TC Logistics, on whose behalf Carlo Ward responded to say that the company did not operate vehicles. The box of documents sent to his Poole office was solely related to BKG. There had been no further communication. He had believed 3TC may have been operating vehicles as two vehicles had been stopped whilst in 3TC livery. Ms Hadzik asked Mr Dean whether, on those encounters, the driver was asked who he was working for. Mr Dean confirmed that would be normal practice but they were not his encounters so he could not be sure. He had requested hiring agreements but none had been provided. In summary, he was unable to conclude whether it was poor management systems or something more fundamental that was at fault.

The evidence of Terry Gover, Director and Transport Manager

31. Terry Gover told me that his father had started BKG thirty-seven years ago. They had incorporated Whiteparish to undertake a particular contract moving fireworks that required ADR drivers. Due to difficulties recruiting and retaining ADR drivers, they now sub-contracted that work to Goldstar and Mainline. They now wanted to run the Whiteparish vehicles on the BKG licence.
32. He had acquired his transport manager entitlement through grandfather rights in 1976. He had recently attended a refresher course following the examiners' visits. Other than that, he had no formal training. He did oversee all the operations and had a forward planner. Carlo Ward runs the transport side on a day to day basis. Carlo would sit his transport manager CPC in September. Then he would be added to the o-licence. About 90 – 95% of the refresher course was what he already knew. About 5% was new material to him. Roller brake tests were being undertaken but the results were not marked on the paperwork.
33. Tony Gover was responsible for adding vehicles to the licence. They had used the same system for the last 37 years. They now did everything online. They always send a fax and follow-up with a phone call.

34. On the day of the maintenance investigation, he had been at the office at 8. When it got to 9 or 9:30, he thought the vehicle examiner must have been held up or wasn't coming so he left. He had never seen a Section 99ZA production letter for Whiteparish. He was unaware that what was sent to the traffic examiner was incomplete. They had assumed everything was there. He had been out seeing customers when the traffic examiner visited. He was happy to have the FTA come in, in six months' time, to conduct an audit.
35. I put it to Terry Gover that, on 27 May 2017 (the day that WU17LVX was locked in to BKG's company card), that would make seven vehicles in possession. He nodded his head but did not otherwise answer.

The evidence of Tony Gover, Director

36. Tony Gover told me that it was his job to specify vehicles. The process was that he would write the change on a sheet of paper. He would then fax it to Leeds and put a copy in the post. He had always done it that way. He accepted that was old-fashioned. He always posted a copy.
37. When Traffic Examiner Dean visited, he asked to speak to the transport manager who wasn't about. He accepted he should have been more polite. Leeds had said that examiners should announce their visits in advance. Mr Dean should have given him a ring. He had rung Dave Huggins [STL, OTC Bristol] to complain about the visit and been referred to DVSA. He had no involvement in relation to the Section 99 production letter. He did the maintenance side. He had not yet undertaken any training because "I don't hold the licence". He was booked on a refresher course on 6 June.
38. I asked when the company had first got access to the online system. He told me only at the early part of this year. I noted that, when I had retired earlier to check how many vehicles were specified on 4 April 2017, it appeared that he had added the vehicle himself electronically. I took a further adjournment so that the operator and Ms Hadzik could consider the transaction history on the licence. On reconvening, it was evident to me that Tony Gover was struggling to respond and I adjourned the proceedings for an indicative 3 weeks to allow the full transaction history to be provided and for the operator to prepare for the issues arising.

BETWEEN THE HEARINGS

39. A date was agreed with the parties of 21 June; the operator had no availability for the following week which would have been the three weeks indicated. I was not content to allow the matter to continue as far as, potentially, August, hence the slightly earlier date. On 12 June, Mark Davies of Backhouse Jones wrote to request an adjournment because Tony Gover had been admitted to Winchester Hospital. No supporting evidence was provided. I decided to continue on 21 June.

21 JUNE 2017

40. Terry Gover and Carlo Ward attended for the operator represented by Ms Hadzik. Traffic Examiner Andrew Dean attended for DVSA. I was not provided with any evidence in relation to Tony Gover's medical condition, nothing from a doctor to say that he was unable to attend and he had not provided a statement. The "Clinical Contact" report submitted by Ms Hadzik is dated 15 June 2018. It says he was visited at home and was reported as feeling better. He was advised to complete a further 5 days of antibiotics and to keep his leg in a clean environment. By 21 June, the date of the hearing, it seems he was expected to be fully well.
41. In relation to the potential operation of more than 6 vehicles on 27 May 2017, the operator had produced a "Vehicle Off Road" (VOR) notice in relation to one of the operator's other vehicles, HX05LTV, within the package of documents sent to Traffic Examiner Dean. Mr Dean accepted that such a document was provided. He went on to confirm that the operator had failed to provide any records for the vehicle in response to the Section 99ZA production letter which covered the dates 1 March 2017 to 30 May 2017. The vehicle had been encountered in use on 4 April 2017. The operator now contended that the vehicle had only been used for storage in the yard during that period, however it was further encountered by Vehicle Examiner David Blake on 16 June 2017. The odometer reading at that date was 881,310, on 4 April 2017, it had been 876,012. The vehicle had, therefore, covered 5,300 km whilst allegedly being used only for storage in the yard.
42. I asked why the bank statements for BKG clearly showed a regular wage run whereas those for Whiteparish did not. I was told that the operator accepted that Whiteparish didn't employ anyone and that it had always been that way. The problem with that position had only recently become apparent.

Closing submissions

43. It was accepted that Tony Gover had "got in to a pickle" whilst giving his evidence. It was the case that his preferred method of changing vehicles was submission of faxes. CLO still showed a fax number on its correspondence as of today. Tony Gover's position was that faxes were received and some were clearly actioned. The legal obligation is to notify; fax is an accepted means. The one month period of grace is not relevant when notification has been made. He sent the fax and confirmed receipt. It was Terry Gover's understanding that Tony Gover also followed up with post.
44. It was proposed that Tony Gover would stand down as director. Carlo Ward and Tom Gover would be appointed to the board of BKG. Terry Gover would give an undertaking that Tony Gover would play no further part in the management of the business.
45. The succession plan would be brought forward. Terry, Tom and Carlo would be directors. Carlo would become an additional transport manager. This would be done in September. An additional individual, Dave Ruis, would be appointed in the next six months. That would be a transport assistant role. He

was quite young and held Class 1 and 2 entitlement. He will continue to progress in the business.

46. It was re-asserted that Tony Gover does not use the online system. He wasn't lying nor trying to mislead at the earlier hearing. He prefers and trusts fax. He does dip in and out of the online service. He had frequent login and password issues but would occasionally use online.
47. Terry Gover and Carlo Ward accepted that Tony should have been more cooperative when the Traffic Examiner visited. If he had been, the company may not be here now. The new application in relation to BKG was to amalgamate the business. It was effectively like-for-like. They only intended to operate nine vehicles across the fleet. It was never intended to get to twelve. The operator wanted the licence to continue. The problems related to the poor management of notification of vehicles. It had all snowballed from there. They had taken a lot of steps. The vehicle examiner had been satisfied. Taking in to account the history, weighing it all in the balance, it would be disproportionate to bring the business to an end. Tony Gover had panicked under pressure. It was not a deliberate attempt to mislead. It was his decision on that basis to stand down. He realised he had jeopardised the business.

CONSIDERATION AND FINDINGS OF FACT

48. The operators were called to public inquiry primarily because of the lack of clarity in relation to who was operating which vehicles, and how many, along with the failure to comply, either fully or at all, with DVSA's Section 99ZA production letter.
49. The first ground is whether more vehicles have been operated than authorised. This relates to BKG. Having heard the evidence, the ground falls to be made out in two ways. The first relates to the encounter history with BKG vehicles. Vehicle WU17LVX was locked to BKG's digital tachograph company card on 27 May 2017. Six vehicles were already specified as in possession at this time. At the second hearing, the operator contends that vehicle HX05LTV, whilst specified, was only used for storage in the yard. However, DVSA evidence shows that it covered 5,300 km in the ten-week period from 4 April to 16 June 2017 whilst having been declared VOR after MOT on 10 April. The vehicle is a two-axle rigid, a vehicle more associated with local work than long-distance trucking. I therefore find that it is more likely than not that the vehicle was used throughout that ten week period and that WU17LVX was the seventh vehicle operated by BKG from 27 May.
50. Secondly, bank statements show, and the operator accepts, that Whiteparish had no employees. Section 58 of the Act defines the user of a vehicle as its owner or *"the person whose servant or agent the driver is"*. BKG pays the drivers; the drivers are BKG's servants and agents. At the date of the first hearing, twelve vehicles in total were specified across the two licences. BKG has clearly operated well in excess of its licence authority. In doing so, it has used Whiteparish's licence authority unlawfully and Whiteparish has accordingly lent its licence authority to another entity. A breach of Section 6 of the Act is clearly made out in relation to BKG but not Whiteparish.

51. There is an annotated record in my BKG brief relating to a conviction in early 2013. It is now more than five years ago. There is no other evidence in front of me of convictions. Sections 26(i)(c)(i) and (ii) are not made out in relation to either licence.
52. A driver's hours prohibition notice was issued to a BKG driver on 4 April 2017. An s-marked mechanical prohibition was issued at the same encounter. The BKG Operator Information and Performance Report at page 77 of my brief identifies a total of four mechanical prohibitions and an overloading conviction. The equivalent report at page 40 of the Whiteparish brief identifies five mechanical prohibitions, with three more for drivers hours and two for overloads. Section 26(1)(c)(iii) is made out in relation to both operators.
53. The Operator Information and Performance Reports identify two DVSA-issued fixed penalties for each operator. Section 26(1)(ca) is made out in relation to both operators.
54. The issue of fixed penalties and prohibitions also confirms that the undertakings specified at paragraph 16 above have not been complied with and Section 26(1)(f) is made out in relation to both licences.
55. Whiteparish has not operated vehicles. It has allowed its licence authority to be used by BKG. It does not employ any staff including a transport manager. These are all material changes from the situation that was stated to exist when the licence was granted. Section 26(1)(h) is made out in relation to Whiteparish. BKG has operated more vehicles than authorised. That is a material change and Section 26(1)(h) is made out.
56. I turn now to the repute of the operator and I do so by considering each of the two directors, one also being the transport manager, separately. Tony Gover appears largely to run the operation. It is he and only he who DVSA has dealt with. He organises the maintenance. He specifies and de-specifies vehicles. It was he who failed to cooperate with Traffic Examiner Andrew Dean, a rudeness and lack of cooperation that the operator, or at least Terry Gover and Carlo Ward, now understand may have led them to public inquiry.
57. Tony Gover told me that he faxed vehicle changes to Leeds. He told me, quite calmly and clearly, that he had accessed the online system only since the start of this year. In checking the vehicle history to ascertain how many vehicles were specified on 4 April 2017, it became apparent that Mr Gover had accessed the online system consistently for five years. He has conducted 28 vehicle change transactions on the BKG licence online since May 2011, contrasted with 3 vehicle transactions undertaken by CLO staff. This information was provided when I adjourned the first hearing. The report showed that, not only did Tony Gover use the online system for 90% of vehicle transactions, he also did more complex transactions online such as removing a director and making a variation application. He persisted that copies are also posted to Leeds even after I pointed out that none were scanned to the licence record as they would be if hard copies had been sent by surface mail. In writing my decision, I wished to check whether the approach was consistent across the licences. Twenty-five out of twenty-six

vehicles changes during this period for Whiteparish were undertaken using the self-service online system. I make nothing of this in my decision.

58. The live evidence provided by Tony Gover, supported by the alleged copies of faxes sent to Leeds in relation to a number of transactions, show that Tony Gover fabricated a story in advance of the hearing with the sole purpose of misleading me. That he failed to attend the second hearing without any supporting medical evidence of his inability to do so is a demonstration that he wished to avoid any further scrutiny.
59. I find Tony Gover has failed to cooperate with DVSA. He developed a plan to mislead me and lied to me directly. He then absented himself. He is not a man in whom I can have any confidence. There are positives in the maintenance improvements but my concerns are more fundamental. He is simply totally untrustworthy.
60. The role of Terry Gover as transport manager is of concern. He had never been seen or heard from by the vehicle examiner. He had not attended any of three pre-arranged maintenance investigations. Tony Gover told me that he left the response to DVSA's production letters to Terry. Terry told me that he assumed that everything was in the box delivered to DVSA's Poole office. That was clearly not the case. Amongst the most fundamental, no digital tachograph raw data was provided. Traffic Examiner Dean was therefore unable to conduct any analysis of whether or not the operator was complying with the drivers hours rules. No data was provided even to the date of the inquiry. More serious still, there was no response whatsoever in relation to Whiteparish. Terry Gover told me that he was completely unaware of the production letter having been received. Traffic Examiner Dean includes in his brief (page 76 of my bundle) "Track and Trace" evidence that the letter was signed for by "WARD", presumably Carlo Ward who I am now offered as a clean director and transport manager. I find it more likely than not that Terry Gover had actual knowledge of the production letter in relation to Whiteparish. In the alternative, as statutory director and transport manager, he is reckless in not making reasonable enquiries and having in place effective systems for knowing.
61. Terry Gover supported the story fabricated by his brother in relation to specification of vehicles. He told me that the company was not in the habit of using the self-service system which is clearly not the case. As transport manager, he is required to ensure the licence is properly managed. By failing not to respond at all to the Whiteparish production letter, Mr Terry Gover must forfeit his good repute as a transport manager. The position is worsened by the failure to supply tachograph data and other information in relation to BKG and by the lies told and supported to be told at public inquiry.
62. I must have regard to the Senior Traffic Commissioner's Statutory Guidance and follow his Directions, unless I find legal grounds for not doing so. In coming to my decision, the relevant document is Number 10 and Annex 3 to that document the most relevant. In seeking to identify positive features, it appears that maintenance, on the whole, was mostly satisfactory. Compliance as demonstrated through roadside encounters is not the best but nor is it the worst.

63. The negative features are more plentiful:

- Vehicles are repeatedly not specified when acquired. This is an offence in itself but, in this case, it appears to be a device to make it all but impossible for DVSA or my staff to know how many vehicles are in possession and being operated,
- BKG failed to comply fully with the DVSA production letter,
- Whiteparish failed to comply **at all** with the DVSA production letter
- Tachograph data was not used as I would have expected for the operator to demonstrate how many vehicles had been run at any time strengthening suspicions that more vehicles were in use,
- BKG has operated more vehicles than authorised, both by manipulating the specification of vehicles on its own licence and by the use of the Whiteparish licence,
- Whiteparish has not operated. It has simply allowed its licence authority to be used by BKG.

64. From this balancing exercise, I categorise the operator's conduct as deliberate and reckless. There has been a wilful failure to provide fundamental drivers hours information and raw data and an attempt to mislead me. The starting point for action is "severe". Ms Hadzik points to the operator's previous good conduct but, in the case of BKG, the previous history is most unattractive. I am asked to consider a restructured and consolidated BKG but it still has Terry Gover as transport manager and director. That gives me no comfort. The starting point for action remains "severe".

65. I turn now to the helpful questions posed by the Upper Tribunal to assist traffic commissioners in determining whether a licence should continue. It suggests to me that the answer to the "Priority Freight"² question of how likely is it that this operator will, in future, operate in compliance with the operator's licensing regime, is "very unlikely". Until the two individuals who comprise these companies can be honest and open with both the enforcement agency and the regulator, it is impossible to answer that question any other way.

66. If the evidence demonstrates that future compliance is unlikely then that will, of course, tend to support an affirmative answer to the "Bryan Haulage" question: is the conduct such that the operator ought to be put out of business? That is the case here. I simply do not know how many vehicles have been operated, by whom and the operators have refused to allow their drivers hours compliance to be assessed. There is no alternative. Those who evade proper scrutiny have no place as licensed hauliers. They pose a road safety risk and it is entirely unfair on all those operators who work so hard to cooperate and comply. Terry Gover, Tony Gover, BKG and Whiteparish have each lost their good repute.

67. The guidance to which I must have regard³ reminds me, at paragraph 54, that, whilst there need not be an additional feature before a disqualification

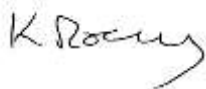
² Appeal 2009/225 to the Transport Tribunal

³ Senior Traffic Commissioner Statutory Document No. 10 "The principles of decision making and the concept of proportionality", December 2016

order is made, it is not automatic. My balancing exercise in relation to disqualification considers the same material factors as that which I have undertaken in relation to revocation. The lack of anything approaching honesty on the part of these operators and their directors and transport managers mean that it is necessary for them to have a period of reflection before any attempt to re-enter the industry. In the positive, this is not a case where operators have deliberately put life at risk and I take account of this in setting the disqualification period.

DECISION

68. Pursuant to findings under Sections 26(1)(h), 27(1)(a) and 27(1)(b) of the Act, licence OH0209378, Whiteparish Transport Limited, is revoked with effect from 23:59 hours, 24 August 2018.
69. Pursuant to findings under Sections 26(1)(h), 27(1)(a) and 27(1)(b) of the Act, licence OH0206924, BKG Transport Limited, is revoked with effect from 23:59 hours, 24 August 2018.
70. On a finding of loss of repute as a transport manager, Terry Kevin Gover is disqualified from acting as such in any member state until rehabilitated. Rehabilitation requires that a period of two years passes and that he sit and pass the transport manager CPC qualification.
71. Terry Kevin Gover, Anthony Kenneth Gover, Whiteparish Transport Limited and BKG Transport Limited are each disqualified, pursuant to Section 28 of the Act, from holding or obtaining an operator's licence or being involved in the transport operations of an entity that holds or obtains such a licence for a period of 2 years from 24 August 2018.



Kevin Rooney
Traffic Commissioner

23 July 2018