



## **REDACTED PUBLIC VERSION**

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**TRAFFIC COMMISSIONER FOR SCOTLAND**

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

**LINDSAY CRAFT T/A SCRAP A CAR SCOTLAND – OM1097007**

**SCRAP A CAR SCOTLAND.COM LTD – APPLICATION OM2001733**

**PUBLIC INQUIRY HELD AT EDINBURGH ON 28 AUGUST 2018**

**DECISION OF THE TRAFFIC COMMISSIONER**

### **Background**

1. Mr Lindsay Craft (b.1970) of Kelty holds a restricted goods vehicle operator licence, with authorisation for 1 vehicle and 1 trailer. The licence was granted on 27 July 2010. The authorised operating centre is Strathore Plant Hire, Strathore Road, Thornton, Kirkcaldy, KY1 4DF. In the application form, dated 20 May 2010, Mr Craft declared that he had been bankrupt (sequestered).
2. At 5-year renewal of the licence in May 2015, Mr Craft wanted a trading name change from Craft Recovery to Scrap A Car Scotland and added the name of Heather Cameron (b.1986) as a partner. Mr Craft later wrote to say Miss Cameron was a life partner, not a business partner.
3. The sole vehicle specified on the licence since 2015 has been BX52 NPJ (18t). In the period up to 8 June 2015, five other vehicles have been specified from time to time as the sole vehicle.
4. By application, dated 23 April 2014, Miss Heather Cameron applied for a restricted operator licence for 4 vehicles (reference OM1129444). Miss Cameron's application was for vehicle recycling from the Strathore Road address and with an email address which had scrapacarscotland within it. She gave a trading name of Scrap a Car Scotland. By covering letter of 11 May 2014 to the Leeds Central Licensing Unit ("Leeds") she wrote that she was applying for 4 licences to start a new internet vehicle recycling service, with one five car transporter and 2 x 7.5t transporters and a 7.5t HIAB truck.
5. Scrap A Car Scotland.Com Ltd, Scottish Companies House SC535292 was incorporated on 12 May 2016. The sole director now is Mr Lindsay Craft (Miss Cameron was a director

from 12 May 2016 to 13 December 2016). Mr Craft is also director of Scrap A Car Holdings Ltd (SC535212). Mr Craft is the person with significant control of both companies. At no time has either of these companies held a goods vehicle operator licence.

6. By application received on 27 January 2017, Scrap A Car Scotland.Com Ltd applied for an operator licence to operate 6 vehicles and 4 trailers from Strathore Road, Thornton. At this Public Inquiry Mr Craft stated he no longer sought trailer authorisation. The sole director and contact person for the application was Mr Lindsay Craft. 4 vehicle registrations were given on the application BX51 NPJ; P5 SWT; KIG 6497 and HX56 NCD. AM Phillip of Glenrothes were nominated as providers of safety inspections. Mr Craft declared that he had been bankrupt (sequestered) and also that he held the sole trader licence which would be surrendered on grant of this application. This declaration revealed that not only had he been sequestered in 2005 but also in 2014. The latter sequestration had not been declared to the Office of the Traffic Commissioner by sole trader licence holder Mr Craft.
7. Given concerns over Mr Craft and given that my Office received an adverse report from DVSA, the application by Scrap a Car Scotland.Com Ltd (hereinafter "the company") could not be granted until I was satisfied and I directed that the applicant company and Mr Craft, as operator, be called to a conjoined Public Inquiry.

### **Public Inquiry**

8. The Public Inquiry was held at Edinburgh on 28 August 2018. Those present were Mr Lindsay Craft, represented by Mr N Kelly, Solicitor, Glasgow. Mr Thomas Gracie of Cupar Training Services and Mr Elliot Scott of AM Phillip attended as witnesses but Mr Scott was not called to give evidence. DVSA was represented by Traffic Examiner Mr J Cobban, with colleague Examiner Mr A Mohammad observing.
9. The Public Inquiry briefs were taken as read into the record. As well as details of the licence/applications, the DVSA report, that for the company also contained pages from the company's website, including photographs of vehicles.

### **Productions**

10. The operator/applicant lodged the undernoted productions. I have had regard to all of these even though some may not be expressly referred to in this decision.

#### **Financial**

**[REDACTED]** current account statements for the company.

**[REDACTED]** reserve account statements for the company.

Company Annual Report and unaudited financial statements.

Company management accounts for year ended 31 May 2018.

**[REDACTED]** current account statements for year ended May 2017 for Mr Lindsay Craft.

Email dated 27 August 2018 to Mr Kelly from Condie's Accountants re. weekly costs and impact of cessation of trading.

#### **Non Financial**

- (1) DVSA TEOR dated 21/12/17 (the Inquiry brief did not contain the full TEOR)
- (2) McConechy's Torque Policy.
- (3) VOSA Guide for Recovery Operations (July 2013)

(4) Mr Kelly's analysis, dated 27 August 2018, of PMI frequency.

5 coloured pocket folders:

Orange – “driver defect reports for 4 months”;

Pink – driver files; licence checks; infringements and “RTD”(sic) [containing 7 green driver files and 4 separate sheets of paper];

Blue – “inspection sheets last 4 months and planner”.

Green – “maintenance contracts) – [with AM Phillip and company dated 17 January 2017 – 6 week frequency]; [with Scania operator named as Scrap my Car Fife dated 13/4/17 – R & M on SK17 NVU]; [with Scania R & M on EM67LLY dated 13/10/17];

Yellow – “Induction Procedures and memos – example of system used”.

**Sequestrations**

11. Within the Public Inquiry brief was the undernoted documentation:-
  - (a) Accountant in Bankruptcy certificate, dated 16 December 2009, discharge of debtor relative to Lindsay Craft – estate declared bankrupt on 31 May 2005, discharged 31 May 2008;
  - (b) Copy of letter received at Leeds on 8 July 2010 from Mr Craft explaining his bankruptcy in context of the 2010 application by Mr Craft for a sole trader licence;
  - (c) Accountant in Bankruptcy Certificate of discharge dated 24 January 2017 relative to Lindsay Craft declared bankrupt on 14/4/2014 and discharged 14/4/2015;
  - (d) email, dated 10 March 2017, from Mr Craft to Leeds explaining that when self employed in 2011 recycling cars and scrap metal, he failed to register for VAT in time; was not charging VAT; HMRC claimed VAT. That finished the business.
12. Post the Public Inquiry, Mr Kelly submitted copy of an entry in the Edinburgh Gazette of 10 February 2006 giving notice of a Petition by Mr Craft for recall of the sequestration.

**DVSA evidence**

13. The DVSA evidence comprised the Traffic Examiner's report, with associated productions including photographs supplemented by brief oral evidence at the Inquiry.
14. DVSA was aware that Mr Craft held a restricted licence for one vehicle specified as BX51 NPJ.
15. On 8 May 2017, the Traffic Examiner checked unladen vehicle EU03 XMX at Invergowrie. The driver stated his employer as Scrap a Cars Scotland and he was en-route to Errol to collect cars. On 1 November 2017, at Crombie, a Vehicle Examiner encountered RC53 CUE in livery of Scrap a Car Scotland.com Ltd livery laden with 2 vehicles. The driver said the vehicles belonged to Mr Craft and were being transported to Strathore Road, Thornton to be dismantled and parts transported to Eastern Europe.
16. On 21 December 2017, the Traffic Examiner attended to see Mr Craft but he was ill and he met Mr Thomas Gracie who had been hired as a transport consultant to assist. Mr Gracie said he attended twice a week, totalling 12 hours. The Examiner completed a TEOR. The

Examiner found the systems set up to be robust and showing compliance in all areas. By this, the Examiner meant that scorings of '1' were given against the systems boxes. The Examiner comments section recorded that on 8 January 2018 the Examiner spoke to Mr Craft "who is aware that he has been operating more vehicles than authorised". Mr Craft had applied in March 2017 to increase the vehicle authorisation to 6 vehicles in name of the company. He had 36 employees and had to use the vehicles to get the cars to his site. The Traffic Examiner advised Mr Craft that he should not be operating more vehicles than the one authorised.

17. On 9 February 2018, the Examiner visited the operator again and examined analogue charts and digital charts for 9 vehicles over dates in 2017. No more than 6 vehicles were operated ( i.e. the number of vehicles sought in the application). The TEOR Examiner comment notes that charts show 4 vehicles in regular use in 2017 and digital data show 5 vehicles in regular use in 2017.
18. On 24 April 2018, a Traffic Examiner on a road check at Blackburn A96 checked SK17 VNU in livery of Scrap A Car Scotland.com Ltd, no disc displayed. The driver said he was employed by Scrap A Car Scotland going from Thornton to Old Meldrum. The vehicle was laden with cars.
19. On 12 June 2018, a Traffic Examiner on duty in Moray encountered LNZ 5108 laden with vehicles. The driver said he was employed by Scrap A Car Scotland.Com (pay slip showed the company pays him). The driver was en-route from Thornton to Huntly via Keith and was laden with scrap cars. Downloading the vehicle and driver card data showed the Examiner that the vehicle had been in regular use since 9 May 2018.

### **Mr Craft's evidence**

20. Mr Craft and I met previously when he appeared at a driver conduct hearing. Thus, he was aware of the Traffic Commissioner and the powers of the Traffic Commissioner.
21. Mr Craft confirmed that the sole trader licence was not used any longer. It was the company which was operating HGVs. He confirmed the company was no longer seeking authorisation for trailers. Rigid vehicles were used. The company has 2 Scania's - SK17 VNU and EM67 LLY which are in possession and under R & M Contracts with Scania; CR15 FTY, SR17 GKN, LNZ 5108 are all being replaced. He (the company) has 5 vehicles in possession. 4 new vehicles are on order.
22. He was seeking a licence for 6 vehicles for the limited company. He understood that there had to be trust between an operator and the Traffic Commissioner. His background is that from leaving school he went into the Army for about a year. He lost a leg and had scarring from a bad accident. He married; had a bitter divorce in 2005 which led to the 2005 bankruptcy when the solicitor claimed £2,500 which he considered was due by his ex-wife. The solicitor sued him. He was solvent. He went to the Court of Session to get the bankruptcy overturned. That cost him more. He could not explain why the discharge from the Accountant in Bankruptcy showed May 2008. It had taken over a year from the bankruptcy to get everyone who claimed paid.
23. He gained his LGV driving entitlement and in 2003 started to seek employment driving lorries for others. He was driving lorries for companies which did the same as what he is doing now. He decided to start recycling vehicles. He got the operator licence for 1 vehicle and a trailer and operated an 18t Scania.
24. In 2014, he had a tough time. He had an HMRC inspection as his name had shown up in one of his customer's HMRC audit and VAT had not been charged. HMRC found he had

gone over the VAT threshold. They claimed VAT on a year's sales. That was beyond him. At the time the books were being done by an older man in Lochgelly who had not advised properly. He tried to do a deal with HMRC but they said no. The turnover at the time was £185-200k. He didn't think they needed to charge VAT as they were selling the vehicles on. He was not doing it to be cheaper. It was a mistake which cost him ("us"). He was discharged from the bankruptcy after a year. He apologised for not telling the Traffic Commissioner. It was chaos; it was at the back of his mind; he had Heather and 2 children; he was trying to make ends meet.

25. When they ran into difficulty with HMRC, Heather Cameron said she had funds which she could put into the business, to be part of something. By her applying for an operator licence it would be more solid if she was involved in the business and to make her feel secure. The application was withdrawn as they broke up for a while.
26. On advice from Condie & Co he incorporated the company and used the name as it came from the email address used for people who wanted to scrap a car. They take a car and drain and dismantle it on a production line and recycle the parts. They are licensed by SEPA and have implemented drainage and concrete surfacing to satisfy SEPA. In the last 2-3 years the business has become huge, through hard work and commitment.
27. They remove the parts and engines. He has a main customer, a man who takes engines and parts to Russia. He could not recall how he made that connection. He also has a similar Nigerian client though not on the same scale as the Russian. He markets the company by advertising and local radio and covers the whole of Scotland.
28. He had been open with DVSA. He did not know why there was a delay in his licence application. He had made numerous phone calls and was told they were awaiting reports.
29. He brought Mr Gracie in given the increase in business and the plans for the future. Mr Gracie is qualified with a CPC and is a trainer.
30. The company has invested £200,000 in the yard and facilities there; £¾ million on the new vehicles coming; £¼ million on a state of the art baling system suggested by SEPA. The public accounts for year-end May 2017 show fixed assets of £389,000. He had ordered the new vehicles in the hope of an operator licence – they had to be ordered in advance – with nearly a year lead. For the operator licence either Tom Gracie or Elliott Scott at AM Phillips will have systems in place. He could not see a way forward without an operator licence. He has not been sleeping; he wants the business to run properly. The business model does not fit the 2 vehicle exemption. He used to run smaller vehicles, still under scrutiny. The business wouldn't survive with smaller vehicles and he would have to downsize and lay off people. It was not cost effective to take a 2 car transporter to the Isle of Skye or Dumfries and Galloway.

**In private session**

31. [REDACTED]
32. [REDACTED]

33. [REDACTED]

### **Mr Thomas Gracie's evidence**

34. Mr Thomas Gracie who trades as Cupar Training Services has had a lifetime of involvement with transport, including being a transport manager and HGV driver. He is an accredited driver CPC trainer. Periodically he is asked by operators to look at their systems. He became involved with Mr Craft about a year ago, the referral having been made by another client. Mr Craft needed help. He undertook a small audit and found that Mr Craft had nothing in place. He asked about the operator licence and was told it was in process. He checked driver licences and then worked on drivers' hours, induction, vehicle checks. Some drivers were desperate for help, as they had previously worked on domestic rules. He now goes to the business a couple of days per week, though initially he went in a week at a time to get everything in place. He does downloading monthly and finds very few infringements; though some Working Time Directive issues as Mr Craft was not aware of the Working Time Directive regulations. He could not commit to being transport manager should the licence move to a standard licence as he has other customers. Also much would depend on the outcome of the Public Inquiry
35. He acknowledged that he had been advising a company which was engaging in unlawful operating. He said that had only recently come to light when Mr Kelly told him of the two entities. He knew that if he lost his repute as a transport manager that would have consequences for his other activities.

### **Closing submissions for the operator**

36. Mr Kelly submitted that this was a case in which the circumstances were unusual. Mr Craft holds a restricted licence. He admitted that he has not operated as a sole trader for some time. He is director and sole trader of the applicant company. He made admissions to the Traffic Examiner at their meeting and also at this Inquiry, that the company has been operating. The onus is on the applicant company to show it is fit to hold a licence.
37. There is evidence to show compliance with drivers' hours and that the vehicles are fit and serviceable. The PMI frequency has been affected by early inspection and the next inspection over-running. It averages out but needs greater focus. The operating centre is suitable. The company has sufficient financial resources.
38. I was urged not to place too much significance on the bankruptcy of 2005. The circumstances which led to bankruptcy related to his personal life, with no exposure to others. There was a petition to the Court of Session. He was a lorry driver at the time. He did disclose the bankruptcy on the GV79 for the company application. This was not a case of false declaration. There was a declaration on the form in 2010 and in this company application.
39. In the 3<sup>rd</sup> or 4<sup>th</sup> year of operating as a sole trader, Mr Craft became bankrupt again – from April 2014 – April 2015. The accountant he had was not that helpful and Mr Craft was not charging VAT (as distinct from some who charge VAT but don't disclose that to HMRC). He reached the threshold when VAT should have been paid. He tried a dialogue with HMRC but they applied a guillotine. His personal life was in chaos at the time. There was a duty on him to report the bankruptcy to the Office of the Traffic Commissioner within 28 days.

40. Heather Cameron did apply and then withdrew her application. They reconciled. He is a discharged bankrupt. Not all businesses succeed. The applicant company has financial resources. His company has no convictions.
41. There is an exemption to operator licensing. The 1995 regulations apply. There is guidance in the VOSA guide – the legislation has not changed. Schedule 1 of the Vehicle Excise Act 1991 Part V para 5 (3) applies. The Recovery Vehicles Order 1989 provides for a maximum of 2 vehicles. Mr Kelly argued that the second DVSA encounter came into that category but acknowledged this line only took his client so far.
42. This is an unusual case. Everything expected of a responsible operator is in place bar the operator licence. DVSA found no deficiencies in the systems put in place by Mr Gracie. Systems are in place and are working. The application for the licence had taken so long from January 2017; it was now August 2018. I was asked to consider this when considering the case law (Mr Kelly had lodged copies of the Optimus, Kyle Seafoods and West Mix – see below) and also Dundee Plant Hire where a false declaration has been made over 15 years. He acknowledged the relevance of the Redsky and Aspey Trucks cases. He submitted that very often the reason for illegal operation is because an applicant believed that they couldn't get a licence or did not have the finance. That is not what happened here. Here there was a willingness to comply with the undertakings and financial resources.
43. The Senior Traffic Commissioner's Guidance is that operating without a licence weighs heavily; that a Traffic Commissioner would be entitled to find there was not the required repute if unauthorised operating in face of warnings not to. The sole trader vehicle has a 100% test pass rate. There was nothing to give cause for concern.
44. In West Mix, there was dishonesty in the application; in Kyle Seafoods the operator showed he wouldn't operate legally; in Optimus there were drivers' hours and overloading prohibitions i.e. something beyond operation without a licence. Given these differences, he believed he could submit that I could grant a licence to the company. There had been investment in plant and vehicles. Mr Craft accepts that the Inquiry is a day of reckoning and that he would be unlikely to get a licence for 6 vehicles. It would be open to the Traffic Commissioner to grant for less and there would have to be evidence of non-operation. All vehicles are equipped with digital tachographs so could be downloaded. A grant of the licence could be deferred as has been done in other cases.
45. In conclusion, he submitted that Mr Craft was aware of the seriousness but had tried to impress on the Traffic Commissioner that the company (him) could be trusted with an operator licence.

### **Case law**

46. As well as having regard to the Senior Traffic Commissioner Statutory Guidance Documents, in particular Nos 1 (on fitness) and 10 (decision making and proportionality), I had regard to the undernoted appeal cases:-
  - (a) Thomas Muir 1999 SLT666 (decision of the Court of Session);
  - (b) Aspey Trucks T2010/49 (gatekeeping);
  - (c) West Mix Ltd 2005/537 (unlawful operating);
  - (d) Kyle Seafoods (2009/483) (unlawful operating);
  - (e) Optimus Access Ltd T/2015/12 (unlawful operating);
  - (f) Redsky Wholesalers Ltd T/2013/007 (tests of repute and fitness);
  - (g) Dundee Plant Hire T2013/47 (options for the Traffic Commissioner);
  - (h) Arnold Transport & Sons Ltd v DOENI NT/2013/82 (fair competition);

- (i) Martin Joseph Formby T/2012/34 (trust);
- (j) Bryan Haulage (No.2) T2002/217 (putting out of business);
- (k) Priority Freight T2009/225 (trust for the future).

## **Consideration of the evidence and my decision**

### 47. Findings in fact

1. Mr Lindsay Craft has held a restricted operator licence for one vehicle since 27 July 2010. He is aware of the requirement to hold an operator licence.
2. Mr Craft disclosed that he had been sequestered in 2005. The official records of the Accountant in Bankruptcy show that sequestration to have been discharged in 2008.
3. Mr Craft was sequestered following action by HMRC on 14 April 2014.
4. This material change in the financial circumstances of the licence holder was not notified to the Office of the Traffic Commissioner.
5. Mr Craft continued to operate and completed the standard 5-year checklist for the licence on 11 June 2015. The Office of the Traffic Commissioner being unaware of Mr Craft's circumstances did not instigate revocation.
6. By failing to notify the sequestration, Mr Craft was able to continue to use the licence. Contemporaneously to Mr Craft's sequestration, an application dated 25 March 2014 was made by his life partner, Ms Cameron, to gain an operator licence for 4 vehicles using same operating centre, for same purposes and using same form of email address.
7. I find that was an attempt to expand the operational side of the business at a time when Mr Craft was bankrupt and could lose his operator licence and could not be granted an operator licence.
8. From at least 2014, Mr Craft's sole trader business was expanding such that on advice the company was incorporated in May 2016. Year-end figures to 31 May 2017 disclose turnover of **[REDACTED]** and gross profit of **[REDACTED]** and reflect the rapid expansion of the business.
9. I find that the company began using exempt and non-exempt goods vehicles from sometime in 2016 without an operator licence. The company has continued to use exempt and to operate non-exempt goods vehicles for which an operator licence is required from 2016 to the present day. As at the day of the Public Inquiry, the operation of goods vehicles for which a licence is required had not ceased.
10. Mr Craft as director was warned by DVSA that the company's operation of goods vehicles was unlawful and should stop. The form on which the company applied for a licence warned that there was no authority to operate.
11. The company has at times operated 5 vehicles for which there was no operator licence or discs.
12. Until the engagement of Mr Gracie, neither Mr Craft nor the company had proper arrangements in place which would have met the licence undertakings. I find that by December 2017 Mr Gracie had introduced systems which could have satisfied the licence undertakings had a licence for 6 vehicles been granted.



13. Mr Gracie did not check that there was an operator licence with authorisation which would have covered the operation of goods vehicles by the company.
48. This is a case in which an individual, Mr Lindsay Craft, gained a restricted operator licence, apparently fairly and squarely and openly declaring a past bankruptcy, for one vehicle. At the time of grant of that licence, he appeared to be not unfit and was granted a licence. What happens thereafter is that the business expanded. Mr Craft had some knowledge of the scrap car and metal trade from having driven and worked for others. The accounts reveal a dramatic increase in turnover and gross profit. Mr Craft's evidence was of significant investment measured in hundreds of thousands rather than tens. Employee numbers increased. Mr Craft's use of smaller vehicles and of vehicles which might fall within an exempt category became inconvenient and less profitable. In this context of extensive, expensive expansion – unlawful use developed and became the norm. The motive for unlawful use was not hidden from this Inquiry : it was for profit and expansion.
49. At no time in 2016 or since 2016 did the company desist from using goods vehicles for which an operator licence was required. This unlawful use continued notwithstanding Mr Craft being on clear notice that the company did not have and has not authority to operate. In plain terms, Mr Craft preferred to continue with this business expansion than to obey the law.
50. Having an operator licence is not a casual matter or of choice when it suits or when enforcement agencies begin to "catch up". It is a requirement considered by Parliament to be so important that the failure to have an operator licence and to operate goods vehicles is a criminal offence (section 2 of the 1995 Act). The case law cited by Mr Kelly underscores the seriousness of operating without a licence. The case law also underscores the importance of fair competition. A Traffic Commissioner is entitled to assess any application and where information has been withheld and where evidence of unlawful operation begins to come to light, an applicant cannot expect a speedy grant and a green light welcome. Mr Craft by his omissions and his over-rapid expansion has not only offended HMRC as the tax collecting agency but fair competition and my own jurisdiction.
51. I have a degree of puzzlement as to how this business has become so lucrative and expansionist so quickly given that Mr Craft was bankrupt in 2014/2015. I do not have to pursue that puzzlement. I do have to concern myself with fair competition and the gatekeeper concerns identified by cases such as Aspey Trucks. With Scrap A Car Scotland.Com Ltd, I am dealing with a highly visible, highly liveried, highly marketed company needing and using heavy goods vehicles for its business and patently and visibly using such way beyond the exemptions in place for vehicle recovery operation.
52. I have to secure respect for the regulatory regime and its purposes. I have the Thomas Muir case in mind, as ever. I also have in mind the seam of case law that places trust at the heart of operating licensing. I cannot grant a licence to a person (individual or company) where there has been brazen flaunting of the requirement for an operator licence and self-serving priority given to business expansion and profiteering. I use the word "profiteering" rather than profit. I most certainly am not against profit. I want operators to have successful businesses but I have to protect fair competition and the purposes of the licensing regime.
53. Mr Craft holds a sole trader licence which he has ceased to use. That licence falls to be revoked in terms of section 26 of the 1995 Act. It should have been revoked in 2014 in terms of section 26 (g) "that the licence holder has been adjudged bankrupt" and (h) that "since the licence was issued or varied there has been a material change in any of the circumstances of the licence-holder that were relevant to the issue or variation of the licence". By not notifying the Office of the Traffic Commissioner of his sequestration in

2014, Mr Craft was able to continue operating and to have a licence disc issued for the vehicle(s) specified on the licence. Y91 BFS was specified on 14 March 2014, de-specified on 8 June 2015 when BX51 NPJ was specified and remains specified on the licence (page 5 of the Craft brief). Thus, from April 2014, Mr Craft has held onto an operator licence which was liable to revocation in terms of section 26(g).

54. I do not believe that the significance of the bankruptcy to the operator licence and any expansion of the business was lost to Mr Craft for there was the application by his life partner for an operator licence in almost identical terms to his given the trading name and operating centre but for a greater authorisation to 4 vehicles. This is the evidence of the expansion of the business and the need for additional goods vehicles in 2014. That application was withdrawn due to a breakdown in their personal relationship at the time (since reconciled). To an experienced Office of the Traffic Commissioner eye, and my eye, the application by Ms Cameron was the medium whereby the Scrap A Car business would gain an operator licence and continue its expansion.
55. In respect of the sole trader licence, I find that Mr Lindsay Craft can no longer be said to be not unfit to hold an operator licence. He failed to notify his bankruptcy; he is linked to an attempt to gain an operator licence for his business, albeit that attempt did not go far; he has been the instigator of unlawful operation of goods vehicles. I revoke the sole trader licence with immediate effect in terms of section 26(1) (b) (g) and (h).
56. Having revoked the licence, and as set out in the call up letter to this Inquiry and as is more usual than not in regulatory revocation cases, I have to consider whether I should disqualify Mr Craft in terms of section 28 of the Act.
57. I have considered whether I should proceed to disqualification. If I use the power given in section 28 and especially section 28(6), then the company's application is doomed for Mr Craft is the sole director of the company. I am mindful of that. However, I have decided that this is a case which calls for disqualification given the advantage gained by Mr Craft in not notifying his sequestration. In assessing a period of disqualification, it is helpful to look at the period over which the advantage has extended. In this case, it is from May 2014 to the date when operating by the company commenced when drivers began to be paid by the company and not the sole trader. The company has been in business and operating goods vehicles since 2016, but without an operator licence. Given that Mr Craft is the sole director and controller of the company and its operations, he cannot be said to have gained or re-gained any fitness through switching entity. Unlawful operating has continued.
58. Can I use my power of disqualification in relation to the sole trader licence revocation to extend to behaviour undertaken not through the sole trader entity but the company of which Mr Craft is the owner and controller?
59. I think that the answer to that has to be "yes" but it requires that in considering any period of disqualification, I must balance any positive and negative features. The over-arching negative feature is the deliberate unlawful operating by the company as already described. Another negative feature is that Mr Gracie found no proper arrangements in place when he first assessed the company's operating. It is to the negative that unlawful operation was not stopped by the warning on the application form, or the usual letter of acknowledgement from the Leeds Central Licensing Unit which warns that there is no authority to operate. The DVSA Examiner warned Mr Craft.
60. On the positive side, the systems put in place by Mr Gracie, and as assessed by the Traffic Examiner in the TEOR form should ensure compliance with the caveat (which DVSA and Mr Gracie should have flagged as a serious limited qualification to any positive assessment) that there was no operator licence or authorisation to operate the level of vehicles in use. Mr Craft showed a degree of candour in admitting the sequestration in form GV79 for the company; in admissions to the Traffic Examiner and at the Public Inquiry.

Mr Craft's defence essentially is that having applied for a licence, he expected to get it and he had to continue as planned, as his business would not be profitable otherwise.

61. Having regard to the foregoing features, there is nothing which serves to hold back from using my power of disqualification. I recognise that an application was made; that there do not appear to be false declarations in that application; that DVSA received apparent co-operation from Mr Craft and his drivers and transport adviser; that the transport adviser has put in place systems which, all else being equal, appear to satisfy DVSA. These positive elements serve to mitigate the period of disqualification which I might otherwise impose of 4 years to match the period when there has been operating and when there should not have been. I shall limited the period of disqualification to 3 years with immediate effect and section 28(4) will apply. (The Senior Traffic Commissioner's Guidance on disqualification considerations has helped me). The impact of the disqualification is such that the application by the company must fail.
62. *Et separatim* (lawyer's words for detaching one set of considerations from another) should it be considered that my order for disqualification was wrong or far too long, I refuse the company's application in terms of section 13B as I cannot find that the applicant is not unfit to hold an operator licence by reason of unlawful operating. In balancing the positive and negative features of this case and again applying the guidance in the Senior Traffic Commissioner's Document No.1 on fitness, I cannot overlook the unlawful operating. As set out above, I have acknowledged positives such as that the operator has put systems in place but these do not counter-balance the seriousness of the unlawful operating. The Redsky case provides guidance on the narrowing of the consideration of fitness as against repute. Fair competition remains a consideration, as does the integrity of the regulatory regime. I cannot find sufficient mitigatory or positive features to counter the unlawful operation. That the company will encounter an adverse impact in its finances (as referred to in Condie's email) is not something I can deflect. The company should have applied for a licence ahead of operation. The issue of Mr Craft's sequestration and continued operation would have been a barrier to any straightforward grant had that been all, then deferred grant might have been an option. By his actions, Mr Craft put himself beyond trust.
63. I cannot trust Mr Craft. I cannot grant a licence to this company. I have to respect lawful operators and fair competition. Quite simply, I cannot favour Mr Craft and his reckless and unlawful approach to operator licensing.

### **Summary of my decisions**

64. The licence held by Lindsay Craft is revoked in terms of sections 26(1) of (b) (c) (e) (f) (g) and (h). The revocation is of immediate effect.
65. Mr Lindsay Craft is disqualified for THREE YEARS (3 years) with immediate effect from applying or holding an operator's licence in this or any other traffic area in terms of section 28(1) and 28(4) of the 1995 Act will apply, that is if the disqualified person:
- (a) is a director of, or holds a controlling interest in-
    - (i) a company which holds a licence of the kind to which the order in question applies, or
    - (ii) a company of which such a company is a subsidiary, or

- (b) operates any goods vehicles in partnership with a person who holds such a licence, that licence of that company, or, as the case may be, of that person, shall be liable to revocation, suspension or curtailment under section 26.

66. The application by Scrap a Car Scotland.Com Ltd is refused on the ground that I am not satisfied that the company and its sole director are not unfit to hold a licence in terms of section 13B and that the director is now a disqualified person in terms of section 28 (4).

Joan N Aitken  
Traffic Commissioner for Scotland  
Edinburgh

11 September 2018

Postscripts:

1. It happens that my diary opened up almost immediately after I heard this case and I was able to fully draft and revise this decision within days. My Office received an email, dated 5 September 2018, advising that Mr Craft is to sit his CPC; that he has booked a course with the RHA on 15 November 2018 (no vouching given); that the Court of Session granted the prayer to recall his 2005 sequestration (confirmation being sought); that Mr Craft is now not operating large goods vehicles in scope of operator licensing. He now has three 2 car transporters and three 1 car transporters. I have reflected on whether any of this would serve to change my mind and I have concluded that it would not. The expression, used by the Upper Tribunal, of "too little too late" comes to mind.

2. I have had to re-vist this decision a second time, at the point of signature, as a further e mail of 10 September came from Mr Kelly with copy correspondence dated 17 and 20 March 2006 which refers to the sequestration being recalled. Whilst this might be said to add to the mystery of the inconsistency surrounding the official record referred to at paragraph 11(a) above, the material point is that the 2005 sequestration was declared by Mr Craft before the sole trader licence was granted. The 2014 sequestration was not notified. There is nothing within this additional correspondence which serves to deflect me from the decisions summarised in paragraphs 64 to 66.