

## **IN THE SOUTH EASTERN & METROPOLITAN TRAFFIC AREA**



### **TRAFFIC COMMISSIONER'S DECISION**

#### **REDHILL SCAFFOLDING SERVICES LIMITED**

**LICENCE NUMBER: OK1003899**

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

##### **Decision**

1. Pursuant to adverse findings under Section 26(1)(a), (b), (c)(iii), (f) and (h) of the Goods Vehicles (Licensing of Operators) Act 1995, the Operator no longer meets the requirement of Section 13B of the 1995 Act to be fit to hold an Operator's Licence. Accordingly, Licence OK1003899 is revoked with effect from 23:45hrs on 31 October 2018.
2. Redhill Scaffolding Services Limited and its sole Director, Mr Ronald Williams, are disqualified from holding or obtaining an Operator's Licence or being involved in any entity which holds or obtains such a Licence in Great Britain for a period of 18 months from 23:45hrs on 31 October 2018.

##### **Hearing**

3. Redhill Scaffolding Services Limited and its sole Director, Mr Ronald Williams, appeared before me at Public Inquiry on Wednesday 5 September 2018 in the Public Inquiry Room, Office of the Traffic Commissioner, Ivy House, 3 Ivy Terrace, Eastbourne BN21 4QT. The Operator was called to Public Inquiry as a result of adverse reports from Driver & Vehicle Standards Agency ("DVSA") Vehicle and Traffic Examiners. At the Public Inquiry, Mr Ronald Williams attended in person together with his son, Mr George Williams. Mr George Williams was put forward as the "responsible person" for transport operations. The Operator was not represented.
4. I heard oral evidence from Traffic Examiners ('TE') Mrs Morris and Mr Ward-Minter and Vehicle Examiner ('VE') Mr Alan Clark. I also heard oral evidence from Mr Ronald Williams and Mr George Williams. At the conclusion of the hearing, I confirmed that I would issue a written decision within 7 days.

## **The Issues**

5. The Operator satisfied me from the outset that it had the appropriate financial resources as required by Section 13D of the Goods Vehicles (Licensing of Operators) Act 1995.
6. The Operator did not materially challenge the written or oral evidence of the DVSA Examiners. The Operator did put forward explanations and mitigation with a view to assisting its cause. Accordingly, it is for me to determine what regulatory action, if any, is required.

## **Documents and Evidence**

7. Prior to preparing this written decision, I have reviewed the following:-
  - (i) Public Inquiry Brief.
  - (ii) Documentation copied during the Public Inquiry identified as "PIRW1" (Operating Centre Plan) and "PIRW2" (Maintenance Sheets for vehicle PN08UMZ).
  - (iii) The two e mails sent by Mr Ronald Williams to the Inquiry case worker dated 7 September 2018.
  - (iv) *South Bucks District Council and another V Porter(FC) (2004) UKHL33, English v Emery Reimbold & Strick Ltd [2002] EWCA Civ 605 and Bradley Fold Travel Limited & Peter Wright v Secretary of State for Transport [2010] EWCA Civ 695* in relation to written decisions generally.
  - (v) Upper Tribunal Decisions and other guidance I consider relevant to this determination as listed elsewhere in this Decision.
  - (vi) The current version of the Senior Traffic Commissioner Statutory Guidance and Statutory Directions.
8. I do not propose to set out all the evidence, as it is a matter of record from the documents and available transcript. I do refer to material evidence below as far as it informs my findings and conclusions.

## **Considerations and Findings**

### **Previous History**

9. In 2008, the Operator applied to add an operating centre at Pear Tree Farm but a DVSA Traffic Examiner ('TE'), following a previous visit to the site in respect of another application, had expressed concerns as to capacity. Due to the TE concerns, concerns expressed by Croydon Council regarding the site and as well an unsatisfactory maintenance investigation, it was decided that a public inquiry should be convened.
10. This public inquiry took place on 24<sup>th</sup> November 2009 and the presiding Deputy Traffic Commissioner ('DTC') decided to issue the Operator with a formal warning for the maintenance shortcomings and an undertaking was agreed for 8 weekly maintenance inspections. The variation application was granted as the DTC deemed that there was sufficient capacity in the area shown to him at an earlier site visit.
11. In 2011/12, DVSA began an investigation into the Operator as concern had been raised by Croydon Council and local residents regarding Pear Tree Farm. The investigating TE found that the Operator had been parking more vehicles than authorised and that the correct area on the site for parking was not always used. An investigation of the tachographs also revealed a number of offences and some missing mileage.

12. A Vehicle Examiner ('VE') investigation was also carried out, which found several shortcomings. As a result, and coupled with the matters discovered by the TE, it was decided to convene a public inquiry and this took place on 9<sup>th</sup> October 2012. At the hearing, The Operator offered three undertakings, including a change to the area within the site at Pear Tree Farm where authorised vehicles would park. Having heard all of the evidence the presiding Traffic Commissioner decided to suspend the licence for 48 hours with effect from 0001 hours on 13<sup>th</sup> October 2012. The three undertakings were accepted as part of the decision making process, including the change to the area within the site at Pear Tree Farm where the vehicles were to be parked. This area ("BB") remains where the vehicles are authorised to park and is specifically stated as such on its Operator's Licence.

### Approach

13. There is clear and consistent case law from the Upper Tribunal that I am entitled to treat the conduct of the Sole Director, Mr Ronald Williams ('Mr Williams'), effectively as the conduct of the Limited Company and 'fitness' is determined accordingly. Such an approach has received approval from the appellate tribunal on a number of occasions, including 2013/008 Vision Travel International Limited and T2013/61 Alan Michael Knight.

### Current Issues

14. On 5 February 2018, the VE conducted a maintenance investigation which was marked unsatisfactory, as such for the following shortcomings:
- No evidence of a start of day walk round check being carried out.
  - No drivers defect reporting system available or in use.
  - No record of any defect rectification or remedial work being carried out.
  - PMIs not being carried out by the stated contractor and no contract available with the current provider.
  - Change of correspondence address not notified to the Central Licensing Office in Leeds ("CLO").
15. Mr Williams responded to the shortcomings stating that the drivers will now be allocated 15 minutes prior to them starting to carry out their walk round checks and note any defects. A new maintenance contract with the new provider would be submitted to CLO. The VE met with the director as well as his son, who he was told is employed (since January 2018) as the transport manager/administrator.
16. The Operator has attracted 1 prohibition within the last 5 years and the MOT pass rate within the last 2 years at the date of call-in to Public Inquiry is 50%. On 14 December 2017, PN08UMZ (18 tonne lorry driven by Danny Blakeman) was stopped at the roadside by a TE who discovered the following offences:
- Fail to use a tachograph record sheet or driver card
  - Fail to produce tachograph record sheet, driver card or print outs at the roadside
  - Use a vehicle with a defective tachograph
  - No goods vehicle test certificate in force
17. The vehicle was displaying a disc in the name of Personnel Hygiene Services Ltd (OH0212272) but it had been specified on this Operator's licence since 12 April 2017. DVSA determined that because of the offences found it was necessary for a TE to visit to the Operator.
18. The TE tasked with the follow-up investigation sent the Operator a 'Section 99za letter' requiring various documents and data, which was to be received by no later than 5 March 2018. The required records were not received and so the TE subsequently telephoned the Operator and during 'multiple phone conversations' that day both director and son confirmed that they had not

yet provided the data but would do so early the following week. A visit on 15 May 2018 to the Operator was also arranged.

19. At the date of the Call-In Letter, the TE had only received a partial amount of the information he requested in his original Section 99za letter. The TE was told that there was no system in place to obtain the raw data from the driver cards or the Vehicle Data Unit ("VU"). Raw data from 2 driver cards were received but the director made it clear that a friend had assisted him in obtaining this. In respect of the VUs, he said that they had never downloaded them before and did not know how to do this. He has sent, at the request of the TE, an email to confirm this. No VU data has to date been provided (including at the Public Inquiry).
20. The visit on 15 May went ahead as planned and a score of 9 '3's' and 4 '2's' was the outcome of the Traffic Examiner Operator Report ("TEOR"), see pages 113-117 of the Public Inquiry bundle. No VUs had ever been downloaded and the driver cards were not downloaded prior to January 2018. After January 2018 the driver cards were downloaded 'by a person who works out of the same yard where the Operator is based.' However, the Operator does not receive any copies of the raw data and appear to have 'little understanding of the downloading aspect'.
21. The driver card data provided showed some offences for one of the drivers but no actual drivers' hours offences. However, a full assessment is not possible without a VU data comparison. The Operator had no infringement system in place. It follows that no infringements were being picked up due to a lack of analysis being completed. There was no Working Time Directive system in place, no initial training system and no refresher training system. There was no driver licence checking system in place and 'word of mouth' was the 'way they ensured a licence was in place'.
22. The TE asked the director about the displaying of licence discs. Mr Williams claimed not to have received any discs. It transpired this was due to his failure to notify CLO of a change of address. On the day of the stop, the vehicle in question was displaying a disc in the name of the Operator from whom they had brought the vehicle. Mr Williams stated in his interview that he 'never knew it was even there'.
23. A response to the TEOR was required from the Operator but at the date of the TE writing the report nothing had been received. A response was subsequently received. Mr Williams and his son were invited to a New Operator Seminar on 4<sup>th</sup> June 2018 but they failed to attend having said they would. Mr George Williams told the TE that they had 'forgotten...'
24. At the hearing the following non-compliance was found and acknowledged by the Operator:-

#### Maintenance

- Two Preventative Maintenance Inspections ("PMIs") did not have the top section completed.
- The PMIs do not show a proper brake testing regime. One has no readings at all. Two have percentages for a roller brake test but say it is a decelerometer. There are no print-outs to assist.
- There remain driver-reportable items on the PMIs, not shown on driver defect sheets. Mr Ronald Williams admitted defects found are rectified without being recorded. He could not explain why such defects still regularly appear on the PMIs.
- Vehicle VX56 GYE shows repeated defects for speedometer and tachograph not working but there was no repair for 17 days.
- The PMI forms are out of date e.g. no IM58 or tyre pressures.

- Mr Ronald Williams' knowledge is out of date e.g. he thought the requirement for roller brake testing only came into guidance in 2018.

### Drivers hours and WTD

- The Operator has still never used its Company Card to download VU.
- The drivers hours and WTD data produced was inadequate to form a meaningful assessment of compliance. It is clear that use of mode switch remains an issue. Mr Williams may be exempt from tachograph records but on his evidence he is still not keeping proper WTD records.

25. At the Public Inquiry, the VE expressed concern that there was not sufficient capacity to park 2 vehicles at the Operating Centre. A photograph taken on site showed one vehicle parked in the scaffold storage area. A study of the plan identified this as "Area CC" and not "BB" at Pear Tree Farm. Unauthorised use of an Operating Centre is a criminal offence and a breach of a condition on the Operator Licence. It is an aggravating feature when specific parking arrangements at that site have been the subject of 2 Public Inquiries. Mr Ronald Williams said he did not think to apply to vary the Licence as another Operator previously parked here. I do not find this compelling in light of the site history.

26. There are some positives.

- There have been 2 clear DVSA roadside encounters recently.
- Mr George Williams has tried to educate himself on the requirements from the internet. This is only given limited weight in that it has ensured tasks are done on time but without an enquiring mind as to the quality of the tasks themselves.
- The Operator joined the RHA and has an Operator's Awareness course booked for November. I give this limited weight, as it is very last minute. Further, Mr Williams failed to attend the New Operator Seminar on 4 June 2018 as he "forgot". In fact, he was working and thereby putting compliance after commercial gain.
- The e mails dated 7 September 2018, show immediate steps taken to address some of my concerns but this is very late in the day (as per the Upper Tribunal in Arnold Transport – see below).

27. Since December 2017, the Operator has come into sharp focus for DVSA and now myself. The Operator's systems across the Board were inadequate when the VE and TEs visited. On the evidence before me on 5 September 2018, there are only limited improvements. The crucial area where there has been no discernible effort is the enhancement of the Director or "responsible person's" knowledge. Indeed, the answers today abdicate responsibility, eg maintenance contractor's fault if forms out of date or brake testing inadequate. This Operator has been to previous Public Inquiries. These 'positives' cannot counter-balance the Operator's approach and the fact that previous assurances have not be taken forward. The Upper Tribunal helpfully set out the marker in 2009/225 Priority Freight Limited & Paul Williams that '*Promises are easily made, what matters is whether these promises will be kept: actions speak louder than words*'.

28. I remind myself of the clear guidance set out by His Hon. Michael Broderick, Principal Judge for Traffic Commissioner Appeals in NT/2013/82 Arnold Transport & Sons Limited '*It is important that operators understand that if their actions cast doubt on whether they can be trusted to comply with the regulatory regime they are likely to be called to a Public Inquiry at which their fitness to hold an operator's licence will be called into question. It will become clear, in due course, that fitness to hold an operator's licence is an essential element of good repute. It is also important for operators to understand that the Head of the TRU is clearly alive to the old saying*

that: “actions speak louder than words”, (see paragraph 2(xxix) above). We agree that this is a helpful and appropriate approach. The attitude of an operator when something goes wrong can be very instructive. Some recognise the problem at once and take immediate and effective steps to put matters right. Others only recognise the problem when it is set out in a call-up letter and begin to put matters right in the period before the Public Inquiry takes place. A third group leave it even later and come to the Public Inquiry with promises of action in the future. A fourth group bury their heads in the sand and wait to be told what to do during the Public Inquiry. It will be for the Head of the TRU to assess the position on the facts of each individual case. However it seems clear that prompt and effective action is likely to be given greater weight than untested promises to put matters right in the future.’ This Operator failed to action the majority of the advice given by DVSA. It only joined the RHA the day before the Public Inquiry, in my view it falls squarely in the fourth category.

29. When I pose the question, helpfully suggested in Priority Freight: how likely is it that those before me will, in future operate in compliance with the operator-licensing regime, the answer must be that I cannot satisfy myself on balance that it will be with Mr Williams. I accept that Mr Williams has suffered personal challenges over the last couple of years but he has continued to operate and drive commercial vehicles. When Mr Williams realised he needed help in January 2018, he brought in a family member - someone with no knowledge whatsoever of operator licensing. There was no meaningful change in approach, even after DVSA highlighted real deficiencies. There is a plethora of guidance and advice in the public domain, such as the Guide to Maintaining Roadworthiness with a model PMI sheet in the Annex, of which Mr Williams has deemed knowledge – see 2012/030 MGM Haulage & Recycling Limited. Mr Williams has demonstrated a willingness to put commercial gain before compliance, over a sustained period of time.
30. I turn then to the question ‘is the conduct of the operator such that the operator ought to be put out of business’ as per 2002/217 Bryan Haulage No.2 in my judgement the answer is ‘yes’. When I pose the question whether other operators expect me to remove the Operator from the system, I am satisfied on balance they would also say “yes”. Whilst the proportionality principle requires Traffic Commissioners to make decisions, which are commensurate with the merits of the case, the decision must focus on the impact to road safety and fair competition that flow from the factual findings, regardless in which order the questions above are posed. I do not trust Mr Williams. He suggests in his e mails that I may have got the wrong impression of him. As set out above, the evidence and time line are self explanatory.
31. When I pose the question is revocation disproportionate in the circumstances of this case the answer is ‘no’. Revocation is not disproportionate where, in the absence of any objective justification and excuse, there have been long term, sustained, repetitive deficiencies: 2009/410 Warnerstone Motors t/a The Green Bus Service. Accordingly, I have reached the decision in paragraph 1.
32. In T/2010/29 David Finch Haulage the then Transport Tribunal said:

*“The principles that derive from these and other cases on the point can be simply stated. The imposition of a period of disqualification following revocation is not a step to be taken routinely, but nor is it a step to be shirked if the circumstances render disqualification necessary in pursuit of the objectives of the operator licensing system. Although no additional feature is required over and above the grounds leading up to revocation, an operator is entitled to know why the circumstances of the case are such as to make a period of disqualification necessary”.*

33. Mr Williams has taken up a great deal of Traffic commissioner and DVSA time over the years. It is his fault alone that he has reached this stage. In my judgement, he should be removed from the system for a period for the benefit and protection of other Operators and road users. Accordingly, I have reached the decision set out in paragraph 2 above.

A handwritten signature in cursive script that reads "Sarah Bell".

**Miss Sarah Bell  
Traffic Commissioner  
London & South East England  
10 September 2018**