



**SOUTH EASTERN AND METROPOLITAN TRAFFIC AREA**

**DECISION OF THE DEPUTY TRAFFIC COMMISSIONER**

**PUBLIC INQUIRY HEARD AT IVY HOUSE, IVY TERRACE, EASTBOURNE ON 20  
SEPTEMBER 2018**

**OK2006993 GORDON GROVE METAL COMPANY LIMITED**

**Decision**

- a) Finding made that the goods vehicles used by the operator other than the one authorised vehicle MX53FVG are not vehicles which meet the requirements for recovery vehicles.**
- b) Breach of Sections 6 and 26(1) (c) (ca) and (f) of the Goods Vehicles (Licensing of Operators) Act, 1995 found**
- c) Suspension of licence for 7 consecutive days ordered – to be served by 30 November 2018. Dates chosen for suspension to be notified to the Office of the Traffic Commissioner within 14 days of receipt of decision**
- d) Variation of licence to authorise four vehicles granted with immediate effect and existing operating centre approved for parking of that number of vehicles subject to receipt within 28 days of confirmation of additional adjacent parking places.**

**Background**

- 1. The operator Gordon Grove Metal Company Limited is the holder of a restricted licence granted on the 17 November 2017 authorising two vehicles with one vehicle currently in possession. The directors of the company are Paul Fitzgerald Barnaby and Craig Luke Barnaby.**
- 2. Following the stop of a vehicle on the 17 January 2018 an investigation was undertaken by Traffic Examiner Rossiter and the result of this was deemed to be unsatisfactory. The report compiled by Mr Rossiter forms part of the case papers and the factual content contained in it was accepted by the operator. It is not necessary therefore for me to repeat in**

detail what is contained in it.

3. In summary there were three issues that required determination and consideration at this public inquiry. Firstly there was a dispute between the operator and Traffic Examiner Rossiter as to whether certain vehicles operated by the company fall within the definition of “recovery vehicles” If the vehicles fall within that definition they are exempt from the requirement to be authorised under an operator’s licence and are excluded from other statutory provisions including the need to comply with EU tachograph legislation and (at that time) be subject to MOT testing. Secondly Mr Rossiter found failings in the compliance regime relating to the one vehicle MX53FVG which was authorised under the operator’s licence and the extent of the failings and subsequent remedial action taken needed to be assessed. Thirdly it transpired that the operator had submitted an application to increase the number of vehicles under the licence to four and for this number to be approved at the existing operating centre. This application had been refused prior to the inquiry and I had to determine whether to reconsider this decision in the light of the surrounding circumstances. In the course of his investigation Mr Rossiter had expressed doubt as to the capacity of the operating centre to allow four vehicles to be kept there.

### **The Public Inquiry**

4. Both directors attended the public inquiry and were represented by Mr Hammond. Traffic Examiner Rossiter gave evidence and adopted the contents of his report He was strongly of the opinion that the use of the unauthorised vehicles by the operator fell outside the exemption for recovery vehicles. He also confirmed that at the time of his visit to the operator the tacograph compliance regime in place for the one authorised vehicle was lacking in that very few driver’s hours details had been downloaded and only one vehicle unit head download had taken place prior to his visit. No disciplinary procedures in relation to drivers were in place and working time directive monitoring was absent. In response to Mr Hammond he said that documents he had seen at the inquiry represented a “vast improvement” when compared to what he had seen previously but there were still a number of improvements that could be made.
5. Craig Barnaby told me that his father had started the business which involved the purchase and recovery of scrap vehicles. The company had obtained an operator’s licence for one vehicle because this was used to transport parts for vehicles and recover vehicles which were not disabled. When other vehicles were recovered enquiry was made as to whether the vehicles were disabled and he believed that if they were, they could be recovered by a vehicle not authorised by an operator’s licence provided that vehicle was designed or adapted as required by the legislation. He said that the failings in relation to the one authorised vehicle had been a result of lack of knowledge and systems. He had sought professional help

from a transport consultant David Giles who was present at the hearing and had been subject to two audits by Transport Management Solutions who were represented at the inquiry by Mr Dodds. Various new systems had been introduced and he had attended a DVSA new operator's awareness course and other relevant training.

6. In relation to the variation application evidence was produced to show that the operator had contacted the Office of the Traffic Commissioner on the day prior to the deadline for refusal of the application asking that the decision be considered at the inquiry and had heard nothing further.

## Findings and Decision

### a) Recovery Vehicles

7. The definition of a recovery vehicle is contained in Part V of Schedule 1 of the Vehicles Excise and Registration Act 1994 which states as follows:

*(2) In sub-paragraph (1) "recovery vehicle" means a vehicle which is constructed or permanently adapted primarily for any one or more of the purposes of lifting, towing and transporting a disabled vehicle*

*(3) A vehicle is not a recovery vehicle if at any time it is used for a purpose other than—*

*(a) the recovery of a disabled vehicle*

*(b) the removal of a disabled vehicle from the place where it became disabled to premises at which it is to be repaired or scrapped,*

*(c) the removal of a disabled vehicle from premises to which it was taken for repair to other premises at which it is to be repaired or scrapped,*

*(d) carrying fuel and other liquids required for its propulsion and tools and other articles required for the operation of, or in connection with, apparatus designed to lift, tow or transport a disabled vehicle,*

8. Having regard to this statutory definition there are three essential elements that have to be met for a vehicle to fall within this definition and thereby be exempt from the requirements for authorisation by an operator's licence. Firstly the vehicle must be constructed or permanently adapted, secondly the vehicles being collected must be disabled and thirdly the use must be for one of the purposes specified in subsection (3) above. It is clear to me from what Mr Barnaby told me of the nature of his business that the work the vehicles undertake does not fall within these categories. If vehicles were being collected from the places where they

became disabled (category b) or from places where they had been taken for repair (category c) then an exemption would apply. However in the instant case vehicles are collected from any place for scrap purposes and therefore none of the use requirements for exemptions are met. My finding is therefore that the vehicles other than MX53FVG did require authorisation and their use without cover was therefore unlawful.

## **b) Compliance failings**

9. Having made my finding as set out above it follows that the operator has breached Section 6 of the Goods Vehicles (Licensing of Operators) Act 1995. The physical condition of the vehicles that were inspected in January 2018 and the lack of effective systems also lead me to find that there have been breaches of Sections 26(1) (c) (ca) and (f) of the Goods Vehicles Act, 1995. Having found that those failings have been present I have taken into account the balancing factors noting the improvements that have been made including the engagement of a transport consultant, training and system changes following auditing. It is nevertheless necessary for me to take some tangible action bearing in mind all the circumstances, the level of default and the almost complete absence of systems prior to the intervention by Mr Rossiter. I therefore order a suspension of the licence for a period of seven consecutive days to be served by the 30 November 2018. The operator shall notify the Office of the Traffic Commissioner of the dates chosen for the suspension within fourteen days of receipt of this decision.

## **c) Variation Application**

10. The issue that led to the initial refusal of the variation application was a comment in the report from Mr Rossiter regarding the capacity at the operating centre to house parking for four vehicles. At the inquiry and in subsequent correspondence the operator stated that parking facilities were available within the operating centre and additionally on land adjacent to the centre – written evidence of permission to [park on this adjacent land has been sought but to date not seen by me.. Having considered this and the additional information supplied I am prepared to rescind the earlier refusal decision and grant the variation application to increase the number of authorised vehicles to four.

In relation to the parking issues at the operating centre I am prepared to approve the centre for four vehicles subject to receipt of proof of parking permission on the adjacent land being sent to the Office of the Transport Commissioner within 28 days of the date of this decision. If such parking permission is not given it will be necessary to reconsider the space available at the operating centre and decide whether a further visit from Traffic Examiner Rossiter is required to assess the suitability in more detail. If in the event it is found that the space available is insufficient it will

be necessary for me to review and consider varying the decision to approve the increase in vehicle authorisation.

A handwritten signature in black ink, appearing to read 'John Baker', with a large initial 'J' and a long horizontal stroke at the end.

**John Baker**

**Deputy Traffic Commissioner**

**28 September 2018**