



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

**Al-Ahqas Fruit & Veg Limited  
OC2002910**

In the matter of the  
Goods Vehicles (Licensing of Operators) Act 1995 (The Act)

Public Inquiry at Golborne  
on 21 May 2018

**Decision**

On findings in accordance with Section 26 (1) (c) (iii), (ca), (e), (f) and (h) of the Act, the latter in respect of fitness, I revoke this licence with effect from 27 June 2018 at 23.59 hours.

**Background**

1. Al-Ahqas Fruit & Veg Limited (OC2002910) is the holder of a Restricted Goods Vehicle Operator's Licence authorising the use of 3 vehicles; the licence was granted on 19 May 2017 (an interim authority had been in force since 25 April 2017). The sole director is Muhammed Khalil.
2. The licence has no previous adverse regulatory history.

**The Calling-In**

3. The calling-in to Public Inquiry was triggered by a series of encounters with its vehicles by DVSA and by the Cheshire Police within the 9 month period after the grant of its licence.
4. Those incidents, which concerned matters with striking similarities, were not the subject of dispute and can therefore be suitably summarised here:

### Overloading matters

- 14 July 2017 - Cheshire Police encounter the operator's large goods vehicle and find it is over its gross weight by 15.7%;
- 29 September 2017 - Cheshire Police again encounter one of the operator's large goods vehicles and find it is over its rear axle weight by 49.4%, and over its gross weight by 45.7%;
- 14 November 2017 – DVSA encounter another of the operator's large goods vehicles and find it is over its first axle weight by 12.35%; and
- 28 February 2018 - DVSA encounter one of the operator's light goods vehicles (3.5 tonnes), which vehicle sits outside the operator's licence but find it is over its front axle weight by 12.5%, and over its gross weight by 33.51%.

### S- marked prohibitions

- 27 January 2018 - Vehicle MX58 TKE received an immediate S-marked prohibition, as a service brake was not operating on the second axle nearside wheel. The VE found that the brake disc was cold to the touch and the disc surface was fully covered with corrosion;
  - 28 February 2018 - Vehicle FJ05 HZE received an immediate S-marked prohibition, the load sensing valve was defective or had been disconnected and was clearly not able to function;
  - In total 3 prohibitions had been issued to the operator's vehicles during 4 encounters providing a prohibition rate of 75% in a period of 12 months.
5. Those encounters with the operator's vehicles triggered investigations to be carried out by DVSA. Vehicle Examiner (VE) Wylie visited the operating centre on 8 February 2018 and Traffic Examiner (TE) McCabe on 17 April and 11 May 2018. Public Inquiry statements provided by both the VE and the TE were included in the brief served on the operator and were not the subject of material dispute.
  6. VE Wylie had reported stretched maintenance frequencies, inadequate driver defect reporting systems, and prohibitions leading into the conclusion that shortcomings in the systems led to concerns about the ability the operator to maintain vehicles in fit and roadworthy condition. At the date of his visit in April 2018, no vehicle had ever been nominated on the licence despite it having been in force since April 2017. He further recorded that despite several reminders, the operator provided no written response to the findings made on the PG13 F & G report.
  7. He had described the issue of the second S-marked prohibition as evidencing an "wholly unacceptable situation".

### The Public Inquiry

8. So it was that Muhammed Khalil, director, appeared before me at Public Inquiry on 21 May 2018 at Golborne. English was not Muhammed Khalil's first language, therefore an Urdu interpreter had been provided to translate simultaneously that which was said at the hearing, and facilitate fair questioning of him.
9. Present alongside Mr Khalil was Javaid Kashif, who had been described as the operator's finance manager. It transpired however that Mr Kashif was not an

employee but an accountant originally brought in to assist with financial matters but who had subsequently assisted Mr Khalil on a range of matters related to the operator's licence.

10. The operator was represented by Jonathan Bell, Solicitor.

11. TE McCabe was also present.

### **The Evidence**

12. The operator provided evidence sufficient to satisfy the financial standing requirement in advance of the hearing.

13. In the file of additional papers, presented to me were:

- Legal submissions prepared by Mr Bell;
- A booking form for Mr Khalil and Driver Younis to attend a DVSA New Operator Seminar on 25 June 2018;
- An initial compliance assessment dated 17 May 2018 by Peter Russell of AJR Distribution Consultants Ltd. This assessment included that:
  - i. He had had insufficient time to carry out in a detailed audit and to report;
  - ii. The forward planner was very basic, lacked substance and did not lend itself to continued use;
  - iii. Driver defect sheets had not been handed in and some were incomplete: he had notified drivers of the expectations of them;
  - iv. There was an urgent outstanding need to carry out online checks on driver's licences;
  - v. Vehicle files were prepared to an adequate standard;
  - vi. An overloading policy, which he described as addressing an "obviously very serious problem" had been instituted;
  - vii. Brake testing was neither scheduled nor planned, which was a concern to him; and
  - viii. He concluded "*I feel that much work is required to ensure this operator is compliant, however given time I feel that this can be achieved as long as the operator has the intention to allow for change. I feel he does*".
- A large bundle of the basic but fundamental operator policy documents, blank procedural forms, information sheets and process documents for use across a range of areas of an operator's licence compliance activities;
- A partially completed confirmation agreement for the provision of transport consultancy services by Peter Russell (I was told in evidence that this had since been finalised);
- Copies of driving licences, driver cards and CPC qualification cards but only for two of the drivers used under the licence;
- An interim forward planner populated to show a missed preventive maintenance inspection for vehicle MV15 RSO on 9 April 2018;
- A selection of pages from Peter Russell's analysis of drivers' hours and Working Time Directive compliance in the period 1 January 2018 to 30 April 2018;

14. I heard oral evidence from TE McCabe, Muhammed Khalil and Javaid Kashif. I read the legal submissions provided and heard oral representations from Mr Bell. I was able to examine maintenance records that were brought to the Hearing.

15. **TE McCabe** adopted his Public Inquiry statement. In it, he addressed:

- His initial difficulties in achieving early contact with Mr Khalil;
- Each of the overweight encounters referred to above;
- He noted that Driver Younis, who was at the time of his visit acting in a management role on behalf of Mr Khalil, yet had been the driver of the overweight vehicle on 29 September 2017, when it had also transpired that he was not then the holder of a driver CPC certificate, as he ought to have been;
- The likelihood (later accepted by the operator) that his colleague TE McKay had visited the operator in January or February 2018 and offered advice, prior to his being long-term absent from work;
- The outcome of his Traffic Examiner Operator Report (TEOR) as being unsatisfactory;
- That there was no evidence to suggest that Driver Younis, who had been managing the operator's compliance with drivers' hours and tachograph regulations, had any expertise in that regard, nor that anyone had been checking that he had been scheduling work for drivers correctly;
- That whilst Tachomaster software had recently been obtained, this was on a trial basis only, no purchase had been made and only the driver card data for driver Younis and one set of vehicle unit data had been downloaded since the start of the licence, 9 months' before;
- That no person within the business had any apparent understanding of the software trialled, which might generate reports or check infringements;
- That he had checked analogue charts for FJ05 HZE and found no material issues;
- That no CPC records for drivers other than driver Younis were kept;
- That driving licence checks were carried out for some, but not all drivers;
- That no plating certificates or tachograph calibration/inspection certificates were found for FJ05 HZE;
- That there was no tachograph calibration/inspection certificate for MX58 TKE;
- That he advised that vehicle FJ05 HZE be removed from the operator's licence as it was no longer in use, (I noted that no effective action had been taken on this matter and the vehicle remained on the licence as at the date of the Public Inquiry);
- That he advised that the company employ an outside transport consultant to audit and assist in putting place systems to secure compliance;
- That he had emphasised the importance of the operator providing a written explanation of the shortcomings, which he found. The addendum paragraphs to his Public Inquiry statement disclosed that no such response had been received, and that the operator intended instead to deal with the matters at the Public Inquiry.

16. In his oral evidence, **TE McCabe**:

- Expressed his professional view about the significance in safety terms of the impact of overloading of company vehicles. I was told that dependent upon

the extent of the overloading this would be likely to affect steering of the vehicle, have an impact on the tyres and on the effectiveness of the braking systems. The degree of excess in terms of weight was said to be significant in the event of an accident. He expressed concern about the “very worrying trend” that had developed and the apparent failure to do anything about it;

- Said he believed Mr Khalil had left responsibility to others, perhaps because of language barriers, although he acknowledged that it was positive that Mr Kashif had been brought in;
- Had been surprised at the absence of complete records when he visited, in the light of him having given three weeks’ notice of his visit;
- Accepted that the purchase of the 18 tonne vehicle might minimise the future risk of overloading, although this would be dependent upon distribution of the load, as well as its load weight;
- Acknowledged that the adequate training of drivers would support compliant operation and that the use of a transport consultant would be helpful, provided that his advice was taken on board and the risk of “slipping back” into poor practice was avoided;
- Accepted that the offer of an independent audit would be positive and that attendance on a new operator seminar would be likely to provide good advice, since he was involved in the delivery of such a course. He cautioned that an overreliance on those who might not be properly qualified including driver Younis would increase risk.

17. Muhammed Khalil adopted the written representations made on his behalf.

18. He described his business as concerned with the sale of fruits and vegetables from abroad, which were collected from Manchester Airport daily and distributed to clients including major loads directed to clients in Bradford and Stoke-on-Trent.

19. Having now operated for 12 months, he pointed to a lack of any previous experience in the industry but to employing 9 persons at present. He was blunt in his acceptance that he had no understanding of the undertakings, which were signed up to “at that time” (of the application). He believed that he might have arranged for his wife to translate the particular undertakings to him but when pressed by me, was unable to recall any of them (the licence undertakings).

20. Asked about preparations he made for being a licence holder, he could not describe any, other than that he had asked other people about suitable trucks.

21. He told me:

- An 18 tonne vehicle had been purchased to address the problems with overweight encounters, and that it would be deployed to undertake the large orders to Stoke-on-Trent and to Bradford;
- A pump truck was available to weigh goods for transit but he accepted drivers had not been using it;
- He had had an over dependence on drivers, only providing verbal instructions and appreciated that in order for them to save time they had “just loaded up and left the base”. Pressed by me, he admitted that he knew they were acting in this manner;
- The unladen weight of vehicles had since been established and the payload calculated;

- Asked about what action he took and what arrangements he made in the light of the police and DVSA stops, he replied that he “told drivers not to overload”. He described himself as having been “very busy” and that he had then been ignorant about the nature of the problem he had;
- He referred to having dismissed two drivers (Drivers Sagheer and Qadoos), who had overloaded vehicles.

22. Asked about the stretching of maintenance frequencies, and how that had come about, he pointed to his lack of knowledge and experience at that time. He repeated he had been ignorant.

23. Asked about the apparent failure to comply with the licence undertakings concerned with drivers and tachographs, he referred to not remembering being told anything about it. He considered it had not been a problem.

24. He said he had been unaware that driver Younis required a driver CPC.

25. He did not believe that the written statement of VE Wylie had been translated for him to review in readiness for the Hearing.

26. He had obtained the assistance of Mr Kashif from 11 March 2018 and had established regular meetings with him on Wednesdays. There was no contract for this arrangement and he told me that Mr Kashif would be paid an overall sum when the systems were right.

27. He had sought assistance from Mr Russell, who had visited the business for the first time on Thursday, 17 May 2018, that is 4 days before the Public Inquiry. Muhammed Khalil accepted the conclusions that Mr Russell had reached in his written initial assessment report.

28. He could not explain why he had not taken up the opportunity to attend a DVSA New Operator Seminar, which would have been offered shortly after the licence was granted.

29. He accepted that a response to the PG13 F and G form had not been provided but explained this related to the lack of understanding within the business at that time, and that there was then no team around him.

30. Asked why he felt that I would be able to trust him as director of the licence holder, he referred me to the team now in place on the progress made “over the last 3 or 4 weeks”.

31. Javid Kashif said he believed that Mr Khalil had not understood the implications of failure to comply with licence. He described his involvement in the business as personal, not provided through any firm or accountancy business and that it was a hands-on, open-ended arrangement, which need not end in his withdrawal from it.

32. At the end of the Hearing, I reserved my decision in order to consider what I had read and heard, and to enable me to review the maintenance records provided, and thereafter to provide a written decision.

33. Mr Bell described his client as someone who had “leapt before he looked”. He had had no expertise around him and no realisation that he was choosing to operate in

a highly regulated industry. It was acknowledged that Mr Khalil probably had no understanding of the licence undertakings and may not have read them, or considered them. He said his client was grateful for the intervention of DVSA and that with assistance the problems created by ignorance, lack of experience and the language barrier had been removed. He contended that none of the conduct had been dishonest in nature and the breaches were not a flagrant disregard. He offered that I might trust the operator going forward as a result of a number of matters including the purchase of the 18 tonne vehicle, which would be enough to avoid further offending.

34. He argued that any competitive advantage that might have flowed from the overloading of vehicles had been more than offset by the damage to reputation suffered and the cost associated with the call to Public Inquiry.

35. It was argued on behalf of the operator that revocation of the licence would terminate the business and that the effect of curtailment or suspension of it, where perishable goods were concerned, especially in the light of the forthcoming busy summer season would be particularly problematic.

### **Findings**

36. Having considered all the evidence both written and oral, I made the following findings.

37. I found the reports and statements of VE Wylie and TE McCabe to be full, thorough and balanced; the oral evidence of TE McCabe was even handed. I accepted their unchallenged evidence as coherent and credible.

38. I found the evidence of Mohammed Khalil to be frank and open. I find that his grasp of English to be very limited and therefore likely to have made it more difficult for him to understand the expectations of a licence holder. That said it is beholden on any applicant for a licence to have a clear understanding of the expectations of those responsible for the relevant licensing scheme, whether they speak English or not. The undertakings attached to any operator's licence are fundamental to licence holding. A poor command of English is not a barrier to holding a licence provided that any licence holder puts in place appropriate support arrangements as will ensure that documents can be translated and that effective oral communication can be achieved at all times. In this case, there has been an abject failure to achieve such appropriate arrangements over an extended period. Even allowing for the obvious stresses associated with attendance at Public Inquiry, it is matter of the utmost concern that this director could not describe even one of the undertakings on his company's licence.

39. I found the evidence of Javaid Kashif to be coherent and credible. He has no particular expertise in transport matters but I judge it likely that he would be a competent administrator, albeit involved in the business only for part of the week.

40. Perusal of the maintenance records provided had disclosed the following:

- Vehicle **MV15 RSO** - whilst this vehicle was only nominated on the licence on 5 April 2018, it had been subject to only two preventive maintenance inspections 98 days (or 14 weeks) apart, on 13<sup>th</sup> February 2018 and 22 May 2018. The inspection period nominated for vehicles on this licence is 8

weeks. As recorded on the forward planner it had missed an inspection. During that full period, it had travelled for 25,788 klm. I noted that each of the defects found in May 2018 related to the function of lamps, which could ordinarily be expected to be picked up during a competent walk round check by a driver;

- Vehicle **FJ05 HZE** - whilst this vehicle was only nominated on the licence on 12 February 2018, after the VE's visit it had been subject to preventive maintenance inspections since 6 September 2017. Whilst two of the inspection periods had been timely, that between 6 September 2017 and 23 November 2017 had exceeded 11 weeks;
- It was further noted that on the maintenance inspection report for the vehicle dated 23 November 2017, an entry had been set out reading "*Req rear pads asap*". Brake measurements were recorded on the rear axle as 15% - 15%, yet when the vehicle was subject to inspection on 18 January 2018, no change had been undertaken and the readings remained 15% - 15%;
- Vehicle **MX58 TKE** - whilst this vehicle was only nominated on the licence on 12 February 2018, after the VE's visit, it had been in use since July 2017 but had inspections only since 30 November 2017. One such inspection had taken place during the 9th week, and a further inspection had already fallen due at the date of the Public Inquiry.

41. The encounters when vehicles were operated beyond their load capacity were significant in nature, their seriousness increased through their repetition and the particular incident where the overloading was close to 50%, very dangerous in terms of road safety.

42. The failures in terms of meeting the undertakings attached to the licence are significant and wide ranging. From the requirement to maintain vehicles in timely manner, to keep them fit and serviceable and to avoid the issue of prohibitions through suitable driver defect reporting arrangements, checking of compliance with matters of driver administration e.g. CPC and driving licence entitlement and being satisfied that drivers' hours rules being complied with.

43. There has been a singular failure to manage licence compliance with appropriate care and attention.

44. In consequence of my findings, I find that the interests of road safety and the protection of the public will have been endangered, and that it is likely that this operator will have obtained a competitive advantage.

## **Consideration**

45. The requirements for the management even of a relatively small, restricted operator's licence and the need for assurance about compliance with expectations embodied in the statement of intent and undertakings attached to it, impose weighty responsibilities. The more so, when the sole director speaks and understands little English and claims an absence of knowledge and expertise. The licence requirements however remain the same, the needs of road safety and the principles of fair competition are equally applicable and a director must see to it that there is compliance and must recognise shortfalls in his understanding of requirements.

46. Here though, compliance with the expectations of this licence have been significantly compromised over an extended period. Unaccountably, an opportunity



to attend a New Operator Seminar was missed: this may have provided an early opportunity to tackle issues then arising. The VE and TE found an unacceptable state of affairs. This seriousness of what they found is compounded by the repeated nature of the overweight issues and the failures to take immediate action to address what had happened, especially after the 50% overload. On several occasions, opportunities were presented to take decisive and informed advice. The visits of the VE and TE in February and April 2018 respectively, ought to have been a catalyst for immediate action and positive change. They have not been: as can be seen from the recent extended maintenance frequency for MV15 RSO and the apparently overdue inspection for MX58 TKE, and the last minute nature of what has been presented to me at the hearing.

47. The operator has now sought advice and the assistance provided through Mr Kashif precedes the calling-in to the Public Inquiry. The same cannot be said of the expert advice of Peter Russell, the transport consultant. He carried out some initial work when he was called upon but, so close to the Public Inquiry, little could be achieved by it.

## **Decision**

48. I conclude that those allegations made under section 26 (1) (c) (iii), (ca), (e), (f) and (h) of the Act are made out for the reasons set out above. I have gone on to consider what (if any) action I ought to take in light of my findings.
49. As may be noted from the findings above, I conclude there has been a material change in the circumstances of this licence holder where fitness is concerned.
50. An essential feature of fitness is that an operator commands trust and that a Traffic Commissioner has confidence in them. Little that this operator has done in the current proceedings would convince me that Mr Khalil, and hence Al-Ahqas Fruit & Veg Ltd can be trusted to operate this licence compliantly, even when I take into account the clear period since March 2018 when no further adverse encounters are noted. It is therefore the case that when I ask myself the so-called Priority Freight question - "Am I able to conclude that it is likely there will be compliance?" The answer must be in the negative. When I go on to ask the Bryan Haulage question - "Is it right that this Operator be excluded from the industry?" - The answer to that must also be in the positive.
51. I note in particular the comments of the Upper Tribunal in the decision 2013/82 Arnold Transport & Sons Ltd v DOENI ([2014] UKUT 162 (AAC)) as relevant in the section headed "Some General Principles" at paragraphs 10 to 13:

*"(d) 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". 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 uncontested promises to put matters right in the future.”*

52. It seems to me that this operator falls broadly into the third category envisaged by the Upper Tribunal in that case. As far as I can tell, the operator has taken few productive steps to address the matters raised following the roadside encounters and subsequent investigations. Sadly, this is a case which might be described as “too little, too late”. This is so, even when I take into account the obtaining of the 18 tonne vehicle. Whilst this is certainly a positive step, I share the view the TE that compliance will be as much dependent on the supervision of those who load and drive vehicles, as it will be on the capacity of the vehicle itself. It is the culture and working practices that must change. I cannot ignore that the most recent of overweight encounters concerned a light goods vehicle, which like its 7.5 tonne counterparts, had also been overloaded to a very significant extent. Only at the “eleventh hour”, the operator has laid the very early foundations to rebuild trust in him through the provision of professional help. This, in itself, remains limited in nature, in the sense that it builds a team around the director but not address the fundamental issue. That is, that Muhammed Khalil must demonstrate control over others in the business, he is the guiding mind behind it; he too must be knowledgeable. A continuation of what can only be described as an abrogation of his responsibilities to others simply will not do.
53. In consequence, I have determined that because there is serious default of the expectations of a licence holder that revocation of the licence is in fact the only appropriate means by which the safety of the public and fair competition may be maintained. I am satisfied that making an order for revocation is entirely appropriate and proportionate outcome. Fitness is lacking. There is no evidence that systems, which ensure compliance, are in place.
54. I conclude however that this may not be a business without hope of being compliant going forward, although I am not able to conclude that this is achievable without sustained professional assistance.
55. I shall therefore revoke this operator’s licence. It is unconscionable that it be otherwise. There has been a serious failure to act decisively to address problems as they arose and therefore to save the licence. It is entirely proportionate that the operator suffer the time, cost and inconvenience that application for a new licence will entail, and critically the hiatus during which no licence will be in force, if there is a failure to act with appropriate speed. If a fresh application is to be made, I shall wish to have clarity around what has been achieved since the Public Inquiry. In particular:
- the nature of ongoing support of staff employed within the business,
  - the means by which I might be assured that systems and standards are likely to support compliance through day to day quality assurance processes, not only by an audit,
  - the future administration arrangements, and
  - how the language barriers and lack of understanding by the company’s director, which have marked this case, have been dealt with decisively.

Whether this operator can persuade me that with that sort of help there can be a further licence granted remains to be seen.

56. I am prepared to allow only a short period to pass before the revocation will take effect, namely a period of 4 weeks that is ending on 27 June 2018 at 23.59 hours, thereafter the licence will be of no effect.

A handwritten signature in black ink, appearing to read 'Simon Evans', with a horizontal line underneath the name.

*Simon Evans*  
Traffic Commissioner  
*for the North West of England*  
30 May 2018