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DECISION OF THE TRAFFIC COMMISSIONER FOR THE NORTH WEST OF ENGLAND

**AAA Skip Hire Limited
OC1109834**

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

Public Inquiry at Golborne
on 11 April 2018

Decision

On findings in accordance with Section 26 (1) (b), (c) (iii), (e), (f) and (h) of the Act, the latter in respect of both fitness and finance, I revoke this licence with effect from 18 June 2018 at 23.59 hours.

Background

1. AAA Skip Hire Limited (OC1109834) is the holder of a Restricted Goods Vehicle Operators Licence authorising the use of 2 vehicles; the licence was granted in June 2012. The sole director is Alec Steven Ashworth.
2. The licence has no previous regulatory history; no prohibitions had been issued before those linked to the current matter.

The Calling-In

3. The calling-in to Public Inquiry was triggered by an encounter with the operator's vehicle, S650 CMA, on 22 September 2017, which was found then to be in use with no MOT in force, having expired on 31 July 2017.

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4. A follow-up maintenance inspection, which was triggered, was recorded as unsatisfactory. Two immediate prohibitions were issued during the inspection on 11 and 12 October 2017.
 - On vehicle S650 CMA, it was found that the service brake did not operate on either of the second axle wheels, the brake drum was cold and air bubbles were seen in the brake fluid chamber;
 - On W516 JDA, a fuel leak described by Vehicle Examiner (VE) Gauckwin as “hazardous” was noted: the vehicle was not in use at the time;
 - The VE was concerned by the poor maintenance standards;
 - He further noted inaccurate reporting on driver defect reports and no preventative maintenance records could be supplied for the previous 15 months;
 - He considered that the age of the vehicles justified an inspection frequency of 6 weeks rather than the 10 week regime purported to be operated by the company;
 - There was no forward planner in use and such driver defect reports as were available showed few defects reported;
 - The MOT failure rate stands at 67% over 5 years and 33% over 2 years: much worse than the national average.
5. The VE also referred to what he described as “harrowing” personal circumstances, which Mr Ashworth detailed to me during the hearing, and which the VE accepted will have gone some way to explain some aspects of this non-compliance. Nevertheless, he concluded that there were shortcomings in systems leading to concerns about the operator’s ability to maintain vehicles in a fit and serviceable condition, albeit that maintenance was contracted to a third party with an Authorised Testing Facility (ATF).

The Public Inquiry

6. So it was that Alec Ashworth, Director, appeared before me at Public Inquiry on 11 April 2018 at Golborne. The company was not legally represented but on questioning, I established that a transport solicitor had prepared the written submissions on the operator’s behalf that were before me, although on examination, the document appeared to be incomplete. Mr Ashworth however assured me he was ready to proceed.
7. In the file of papers, including maintenance documents, presented to me was:
 - A booking form for Mr Ashworth to attend an Operator Licence Awareness Course on 03 May 2018 through the FTA;
 - There was also correspondence to the transport solicitors from Peter Russell, a transport consultant, on the date before the Public Inquiry referring to consultancy services and support, which might be offered. Intensive support at the rate of 2 days per month for 3 months reducing to 1 day per month for a further 3 months was mooted. Mr Ashworth told me he had not met Mr Russell and contact with him (referred to in the submissions) had only taken place the day before this hearing. Subsequent to the completion

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of the hearing, I received an email from Peter Russell, confirming that he had been booked to see Mr Ashworth but not until 26 April 2018.

8. I heard oral evidence from Mr Ashworth. I read the submissions provided and was able to examine such papers as were brought to the hearing, and further records, which I had allowed to be provided shortly after it.

Findings

9. Mr Ashworth did not dispute VE Gauckwin's findings.

10. I made the following findings:

- a) Financial resources available to the operator did not meet the requirement for access to £4800 over the 3 month period requested. The calculation provided an average of only £{REDACTED} with a closing balance of £{REDACTED}. Mr Ashworth however referred to the imminent sale of scrap metal to a value which was said would inject over £{REDACTED} into his account;
- b) Mr Ashworth admitted that serious personal family issues had been a distraction from about 2014 but he believed he was now back on track and fully focussed on the licence. He had been in the business for 30 years. I accepted it was more likely than not the recent issues were probably not typical of the licence holder albeit they had persisted for some years;
- c) Mr Ashworth described a "mistake", leading to the use of the vehicle without MOT: he said he had misled himself into thinking the MOT had not expired by his ability to tax the vehicle, even though it later transpired the MOT had run out. Whilst I accepted the explanation, I judged that it evidenced a failure to manage licence compliance with appropriate care and attention;
- d) Mr Ashworth struggled to accept the condition S650 CMA was found in by the VE, putting the VE to the proof that braking on the second axle was inoperative. I find that the use of the vehicle with only 50% of its braking capacity to represent a serious risk to road safety;
- e) I find it is more likely than not that in the period before VE Gauckwin's inspection, there were at best only intermittent preventive maintenance inspections carried out. No additional records had been located or offered to me for that period. I conclude that in this period Mr Ashworth had failed to properly manage the contract with P.E.Blake (his contractor) and had consistently allowed himself to be turned away by them without taking decisive action to recover the position by enforcing the contractual arrangement he had as a client, or else locating an alternative provider. I conclude that vehicles were not subject to proper checks and will have placed the public at unnecessary risk;
- f) I find that in the period since the VE's visit in October 2017 vehicles have not been maintained in fit and serviceable condition:-
 - DK05 LKZ had been subject to inspection on 08 November 2017 and 17 January 2018 according to records produced. The period between inspections is 10 weeks, despite Mr Ashworth purporting to have accepted the advice given to reduce the period to 6 weeks in the operator's response to the VE's inspection given on 31 October 2017; whilst the same vehicle was last used (before its sale) on 26 March 2018, no further inspection took place in the 67 day period after 17 January 2018, again in breach of the undertaking;

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- WU08 HLX has been subject to inspection on 16 November 2017 and 20 January 2018, a period of 65 days, despite the stated intention to inspect 6 weekly (as above);
This vehicle was last used on 09 April 2018 but by this time a further 11 weeks and 2 days had passed. The vehicle remains in use and has again breached the undertaking;
 - Whilst W516 JDA is to be brought in to use under the licence, it has not yet been nominated on the licence and no margin exists. A record shows it to have been inspected and a rolling road brake test to have been undertaken on 10 April 2018.
- g) I have found that some attempt had been made to update the vehicle fleet - WU08 HLX is a 2008 skip loader (11 tonnes) but W516 JDA a much older 11 tonne vehicle. The latter however being used to pick-up waste much less regularly than the other vehicle;
- h) I found that plans to address other adverse matters had not been brought in to action – the purported 6 weekly inspection regime had not been achieved, there was a proposal to locate a second maintenance supplier and professional help that was much needed was not yet deployed;
- i) I accepted the contention that loss of the licence was such that a skip hire business probably could not operate. I was told that in a competitive market such as existed, that any more than a very short suspension would be very difficult to survive. Curtailment of the licence to a single vehicle could be survived by judicious switching of the vehicles on the operator's licence. The operator however wanted a chance to prove that compliance could be achieved.

Consideration

23. Management even of a very modestly sized, restricted operator's licence and the assurance of compliance with expectations embodied in the statement of intent and undertakings attached to it, in what is effectively a one-man business, carries special challenges. The more so, when the sole director also acts as a driver and at the same time he faces problems of significance in his private life. 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.

24. I have taken at face value what Mr Ashworth has told me about {REDACTED}. It is clear that circumstances would have been very difficult for Mr Ashworth. It is the case, however, that compliance with the expectations of this licence were significantly compromised over that extended period. VE Gauckwin found no evidence of preventive maintenance inspections taking place in the 15 months preceding his visit in October 2017. No evidence was offered to counter this by way either of records now located, or invoices paid etc. Administration of systems has appeared to be a particular problem for Mr Ashworth and there has been an abject failure to manage his relationship with his maintenance contractor, who it is said has let him down consistently over a lengthy period. Further, I cannot exclude that shortfalls in finance may have contributed to the absence of preventive maintenance inspections carried out by a third party.

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25. Whilst Mr Ashworth describes having come through a difficult period, I saw few signs during the hearing that in the recent period when things are described as back to normal, there has been evidence of achievement of compliance.
26. I had hoped and expected that in the period following the VE's visit that things would be different. Vehicles have not been subject to timely preventive maintenance checks, promises made to inspect vehicles within shorter timescales (because of their age) promised in an email dated 31 October 2017, have not been met.
27. 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.

Decision

28. I conclude that those allegations made under section 26 (1) (b), (c) (iii), (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.
29. As may be noted from the findings above, I conclude there has been a material change in the circumstances of this licence holder where the sufficiency of financial resources is concerned.
30. 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 Ashworth, and hence AAA Skip Hire Ltd can be trusted to operate this licence compliantly, even when I take into account the unblemished history up to 2014-2015. 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.
31. I note of 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

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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.”

32. It seems to me that this operator falls squarely 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 encounter and subsequent maintenance investigation. Sadly, this is a case which might be described as “too little, too late”. This is so, even when I take into account the largely positive previous history of the licence, albeit that there have been few encounters during the life of this licence. At the “eleventh hour”, the operator has laid the very early foundations to rebuild trust in him through the provision of professional help. There are also prospects that a backer may be found which could place the business on a more sound financial footing.
33. 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 of financial standing and systems, which ensure compliance, are not in place.
34. I conclude however that this is not a business without hope of being compliant going forward, although I am not able to conclude that this is achievable without sustained professional assistance.
35. 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 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, the nature of ongoing support, the means by which I might be assured that systems and standards are likely to support compliance through say an audit, the future administration arrangements, and how financial standing has been met. Whether this operator can persuade me that with the help of Peter Russell there can be a further licence granted, remains to be seen.
36. I am prepared to allow a short period to pass before the revocation will take effect, namely a period of 8 weeks that is ending on 18 June 2018 at 23.59 hours, thereafter the licence will be of no effect.



Simon Evans
Traffic Commissioner
for the North West of England
25 April 2018