



## **TRAFFIC COMMISSIONER FOR SCOTLAND**

### **PUBLIC PASSENGER VEHICLES ACT 1981**

**IAN SHARP – PM1109002**

**ROBERT QUIGLEY – TRANSPORT MANAGER**

**PUBLIC INQUIRY HELD AT EDINBURGH ON 4 OCTOBER 2018**

**DECISION OF THE TRAFFIC COMMISSIONER**

### **Background**

1. In 2012, Ian Sharp (b.1963) of 2 Newtongrange Gardens, Glasgow, G32 8ES, applied for a restricted public service vehicle operator licence for 2 minibuses but that could not succeed as he could not demonstrate that he had a principal occupation. He then applied for a standard national licence and nominated Mr Robert Quigley (b.1964) of 19 Crosshill Street, Lennoxton, Glasgow, G66 7HF as his transport manager. On the face of it, the application and the nomination of Mr Quigley appeared genuine and on 8 November 2012, a standard national licence was granted to Mr Ian Sharp as a sole trader with Mr Robert Quigley as his transport manager.
2. The TM1 form nominating Mr Robert Quigley to the licence, to give the application and then the licence professional competence, represented that Mr Quigley would be an internal manager giving 2 hours each weekday to his transport manager duties (10 hours in total). His full time employment was stated as being a Business Development Manager with a business services company in Kirkintilloch. Mr Sharp confirmed the licence details on the 5-year checklist, dated 25 October 2017, including that Mr Robert Quigley was transport manager.

### **Public Inquiry**

3. Following my receiving an adverse report from a DVSA Vehicle Examiner, I directed that Mr Ian Sharp as operator and Mr Robert Quigley as transport manager be called to a Public Inquiry. The usual call up letters and brief of papers were issued to them.
4. The Public Inquiry convened at Edinburgh on 4 October 2018. Those present were Mr Ian Sharp, operator, represented by Mr N Kelly, Solicitor, Glasgow. A Mr Brian Pierce accompanied the operator. DVSA was represented by Mr William Forsyth, Vehicle Examiner.
5. There was no appearance by or for Mr Robert Quigley. The only contact from him was the return of the Public Inquiry attendance pro forma in which he indicated he would not attend. He made no written representations. I decided that I would deal with him in his absence.

6. The operator lodged productions relative to vehicle inspection, defect reporting and invoices and Tacho Data infringement reports. I have had regard to all of these. Evidence of financial standing was produced through bank statements.
7. As a preliminary matter, Mr Kelly confirmed that the licence was now without a transport manager. He asked that a period of grace be granted and cited the Upper Tribunal case of *Tacsi Gwynedd Ltd T/2015/40*. I observed that from what was in the Vehicle Examiner's report, this operator had not had a transport manager since last year in contrast to those who ask for a period of grace contemporaneously (or within 28 days) with loss of a transport manager. I would require to hear evidence before a decision on grace.

### **DVSA evidence**

8. The Vehicle Examiner's report was in the brief and no oral evidence was needed. In short summary, on 18 August 2016, an immediate prohibition was issued to X50BUS at annual test for a leaking brake pipe. On 11 April 2018 an 'S' marked prohibition was issued to vehicle W768 FOL at Todhills M6 for (1) the load sensing valve seized and (2) emergency door could not be opened manually as cable broken (photographs in brief). The defects were long standing. On 17 May 2018, Vehicle Examiner Forsyth visited the operator, undertook the usual maintenance investigation and completed Form PG13F. The Examiner's investigation revealed that the operator had changed maintenance contractors without notifying the Office of the Traffic Commissioner; that Mr Sharp said he had fallen out with his transport manager and had not had a transport manager visit for approximately 6 months; that a vehicle incident in March 2018 (vehicle came off motorway slip road) had not been notified to DVSA in terms of section 20; that the vehicle inspection records were complete and at stated intervals; that there is a DDR system; that there had been a failure at MOT and a range of advisory items which showed room for improvement.

### **Mr Sharp's evidence**

9. Mr Ian Sharp is a time served welder who has worked in a range of jobs. His connection to passenger transport arose from his involvement with a football team which needed to transport players and that led to evening hires for adults. He did that unlawful operating for 3 to 4 years, though not every weekend and really to help people out. He then got an operator licence in 2012. He does private hires, mostly at weekends in the Glasgow area (no school contracts).
10. He accepted the DVSA findings. In respect of the incident on 11 April 2018 he went to England and bought W768 FOL that day in a private sale. The vehicle had not been on the road for a while. He did a walk round check of the tyres and lights. He did not check the emergency door handle, that was not something he'd check on a walk round. The vehicle did not have a full year's test. He just wanted to get a vehicle as his other vehicle was off the road. He was going to take it to Kelly's for a check over, as he would not put a bus on the road without getting it checked. It took Kelly's time to get the vehicle in place for its MOT and on the road. He no longer uses it given exhaust smoke. The engine is finished. He now only uses one disc and vehicle X50. He bought a vehicle X369 TGE but it is not on the road yet pending this Public Inquiry.
11. He changed maintenance contractors to Kelly's in January 2018 but did not know he had to notify the Office of the Traffic Commissioner. He had fallen out with Mr Quigley who had been keeping him right.
12. Vehicle LIL 8364 had been off road and needing a new engine. He put it to Kenny McNairn at Glenboig who did it for him as a cash in hand "homer". He drove the vehicle back from McNairn's garage and found that the brakes were not working on the vehicle. He went over to the side at a slip road. He got a fright. He blamed Kenny McNairn as he must have disturbed the pipes on the brakes when doing the engine. He went to see McNairn the next

day but he had closed down. He did not report the incident to DVSA as he did not know he had to. He understood the importance of having the professional competence of a transport manager.

13. He knew Mr Quigley through a mutual friend. The arrangement was that Mr Quigley would check the records every 3 – 4 weeks, supposed to be 8 hours per week. He was checking all records up to January/February 2018 when he and Mr Quigley fell out. Since then he had been looking for a replacement transport manager. Mr Quigley had performed the role of transport manager up to a point for 3 – 4 years. Asked how the arrangement worked – did Mr Quigley come to his house or did they meet in a lay-by, Mr Sharp admitted that they only met a couple of times since November 2012.
14. I then put it to Mr Sharp that the transport manager arrangement had been a fiction from the start, from the signing of the TM1 and he admitted such. He admitted that the signing of the 5-year checklist in 25 October 2017 was a false declaration and a continuation of the fiction. He had not ever paid Mr Quigley. The arrangement was a sham.

### **Submissions**

15. Given this evidence, I indicated to Mr Kelly that I could not see any other way other than to revoke the licence given the mandatory nature of professional competence and the law, including case law. The question for the Inquiry became whether and, if so, for how long I should exercise my power of disqualification.
16. In submissions on disqualification, I was told that Mr Sharp had engaged the services of Mr Robison but the arrangement did not continue as there was a disagreement on what Mr Robison was doing and what Mr Sharp was expected to pay. Mr Sharp realised the necessity of getting a transport manager. He had approached 8-9 people and 2-3 had come to the house. Mr Sharp brought Mr Pierce to the Inquiry. Mr Pierce does not hold a CPC but is willing to sit the CPC exams in November 2018 and, if successful, would be transport manager on the licence. It was submitted that Mr Sharp had the knowledge now that he should have had in 2012, that he is a different person. If Mr Sharp is disqualified, he will still have to apply for his repute and to face a Public Inquiry as there is not an automatic grant of a licence following disqualification.

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

17. At the Public Inquiry, I revoked the licence with immediate effect and I reserved the matter of disqualification and the decision in respect of Mr Quigley to allow me to write a decision.
18. This licence has been rotten from the moment Mr Ian Sharp, as applicant for the licence and Mr Robert Quigley as nominated transport manager, placed their respective signatures on the paperwork for the licence. There has been no professional competence on this licence from the beginning; it was a sham arrangement which no doubt would have continued but for the DVSA investigation. Mr Sharp lied to the Vehicle Examiner when he said he and Mr Quigley had fallen out relatively recently. He lied in his initial evidence in this Inquiry. It is now obvious why Mr Quigley did not attend the Public Inquiry for he would have known that his sham and shameful use of his name on something as important as an operator licence would be exposed.
19. The absence of professional competence on this licence is not an academic matter. Mr Sharp has displayed ignorance of the standards and duties required of a compliant operator. He has allowed seriously unroadworthy vehicles to be on the road. The Tacho Data report reveal infringements. Thus, he has been in breach of the licence undertakings and with no supervising transport manager.

20. In revocation cases it is usual to pose the *Bryan Haulage (No.2) T2002/217* and *Priority Freight T2009/225* questions. To the former, in my head, I answered yes he has to be put out of business. To the latter, I answered that he has forfeited all trust. Mr Sharp forfeited any repute he might ever have had – (there was unlawful operating for 3 – 4 years before he even applied for a licence, albeit at local minibuss level) - when he made and continued the sham arrangement with Mr Quigley. It is no wonder he cannot now find a transport manager. No transport manager of repute would rush to give their name to his licence. He has no repute; the licence has no professional competence; there has been material change; prohibitions; and breaches of the licence undertakings. There was no possibility of a period of grace in this case : the *Tacsi Gwynned* case offered no salvation for Mr Sharp given the conduct of this licence since grant.
21. I now turn to the matter of disqualification. I am in no doubt that this case is one in which I must exercise my discretionary power to disqualify. Fair competition and road safety demand that I put Mr Ian Sharp furth of operating public service vehicles. I cannot trust him. He was prepared to lie to me at this Public Inquiry. He operated vehicles from 2012 in the face of a requirement put in place by our legislators (UK and European) to keep us safe through there being a qualified person in control of the transport operation.
22. In respect of any positives to put into the balance, the Vehicle Examiner was satisfied by the vehicle inspection sheets and DDRs. The pass rate at annual test was of 5 passes, 1 fail. Mr Sharp did attend at the Public Inquiry and ultimately did admit to the arrangement with Mr Quigley. Mr Sharp was co-operative.
23. I have had regard to the Senior Traffic Commissioner's Statutory Guidance Document No.10 and also the case law of *C G Cargo and Sukhwinder Singh Sandhu T2014/41*. This licence has been used for 6 years without professional competence. It was rotten from inception. Mr Sharp has saved himself the costs of a transport manager's remuneration and of any measures a diligent and compliant transport manager would have demanded for the licence. By his low standards and lack of knowledge, he has exposed others to risk. I consider that a period of 6 years is appropriate to the circumstances of this case but will abate that to 4 years given that this was a modest licence and that ultimately the truth came out. In truth, my view is that Mr Sharp should find a very different line of work and excuse himself from passenger transport.
24. I now turn to the other party to this sham arrangement, Mr Robert Quigley. He has let everyone down and has betrayed the value and purposes of road safety. He deceived my Office when he signed the TM1 form. The deceit continued. He did not resign but left his name on this licence giving it the outward appearance of compliance. It beggars belief why people such as Mr Quigley do this, for when such arrangements come to light the repute and worth of their CPC qualification are lost.
25. I have to consider whether it would be disproportionate to remove Mr Quigley's repute. I am applying EC1071/2009 and whether the loss of good repute would constitute a disproportionate response in the individual case. In all the circumstances of this case I have no alternative but to find that it is proportionate to find that he is no longer of good repute and cannot be a transport manager for any licence. Trust is essential and I could not trust him with another licence. Having found that repute is lost, I have to disqualify him. By non-attendance, he has deprived me of the chance to consider whether rehabilitative measures are needed and what the period of disqualification should be. I will make it a lifetime disqualification. Should he ever apply for the removal of the disqualification he will have to show repute and knowledge of what is required of a transport manager. I do not direct any rehabilitative measures for I am not in a position to identify any, given his absence.

## **Summary of my decisions**

26. The operator licence held by Ian Sharp was revoked on 4 October 2018 in terms of sections 17 and 14ZA of the Public Passenger Vehicles Act 1981.
27. Mr Ian Sharp is disqualified for FOUR YEARS with immediate effect. Section 28(4) of the Transport Act 1985 will apply such that if Mr Ian Sharp during the period of disqualification (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 applies; or (ii) a company of which a company which holds such a licence is a subsidiary; or (b) operates any such public service vehicles in partnership with a person who holds such a licence, the powers under section 17(2) of the Public Passenger Vehicles Act 1981 (revocation, suspension etc. of PSV operators' licences) shall be exercisable in relation to that licence by the Traffic Commissioner.
28. Mr Robert Quigley has lost his repute as a transport manager and is disqualified for life and with immediate effect in terms of Schedule 3 of the Public Passenger Vehicles Act 1981.

Joan N Aitken  
Traffic Commissioner for Scotland  
Edinburgh

5 October 2018