



**WEST MIDLANDS TRAFFIC AREA**  
**DECISION OF THE TRAFFIC COMMISSIONER**  
**PUBLIC INQUIRY HELD IN BIRMINGHAM ON 17 MAY 2018**  
**OPERATOR: LUCY JAYNE BUTLER**  
**LICENCE OD1147092**

**Decision**

1. The restricted goods vehicle operator's licence held by Lucy Jayne Butler is revoked with effect from 0001 hours on 19 May 2018, pursuant to Section 26(1)(c)(ii), (f) and (h) of the Goods Vehicles (Licensing of Operators) Act 1995 ("the 1995 Act").
2. Lucy Jayne Butler is disqualified for five years, until 0001 hours on 19 May 2023, from holding or obtaining any type of operator's licence in any traffic area and from being the director of any company holding or obtaining such a licence, pursuant to section 28(1), (4) and (5) of the 1995 Act.

**Background**

*Operator details*

1. Lucy Jayne Butler trading as Skyrise holds a restricted goods vehicle operator's licence (OD1147092) for two vehicles. There are two vehicles in possession. The licence was granted in January 2017 after a public inquiry which I had called because of suspicion that the application was a front for a disqualified director Stephen Paul Hudson. Mr Hudson has been disqualified for three years until June 2018 from being the director of any company, because of his conduct when director of Skyways Scaffolding Ltd which was dissolved in 2016 following liquidation. Mr Hudson is Ms Butler's life partner. In the event, I granted the application after Ms Butler undertook to attend an operator licence management course which she duly did.

*DVSA investigation*

2. In June 2017 the operator's vehicle N151 XJA was stopped at the roadside by DVSA. When asked for his name and other details, the driver initially provided the tachograph chart and the details of Stephen Hudson. In fact the driver proved to be a Darren Batkin, who held only provisional category C entitlement and was therefore not entitled to drive the 10 tonne vehicle. Stephen Hudson was driving a van behind. Mr Batkin admitted to lying to the traffic examiner about his identity as he knew that he was not

entitled to drive the vehicle. He was subsequently prosecuted and convicted of driving otherwise than in accordance with a licence and knowingly making a false record.

3. Other tachograph charts in the vehicle showed that he had driven it on numerous occasions. Some charts were in the name of Stephen Hudson and also appeared to have been forged by Mr Batkin. Some charts in the name of Mr Hudson appeared to be genuine, but it transpired that Mr Hudson did not have category C entitlement either – it had expired in 2016. He had thus clearly also driven the vehicle without entitlement. The traffic examiner noted that the charts revealed numerous minor infringements, such as incorrect completion of the centrefield, wrong tachograph time, charts left in for more than 24 hours and incorrect use of mode switch. She concluded that no analysis of charts was being performed and that infringements were therefore not being dealt with.

### **Public inquiry**

4. In the light of this information I decided to call the operator to a public inquiry. The call-up letter was sent by first class post on 6 April 2018 and the brief was sent by registered post on the same date. The inquiry was due to take place in Birmingham on 17 May 2018. Driver Darren Batkin, who held provisional category C entitlement, was called to a parallel driver conduct hearing on the same date.
5. On 30 April the brief was returned to my clerk by Royal Mail, marked “not called for”. My clerk phoned the operator on 8 May and spoke to Stephen Hudson. He told her that he and Ms Butler were aware of the hearing (they had received the first class letter) but had failed to pick up the brief from Royal Mail. Mr Hudson said that Ms Butler was unwell due to a long-term sickness and had given him authority to speak on her behalf. Mr Hudson asked for the brief to be re-sent and this was done on 9 May.
6. On 14 May David Parry, transport consultant, contacted my clerk to say that he had been engaged by the operator. They had been expecting call-up papers for the public inquiry but these had not arrived until 11 May. He stated that he had no availability to represent his client and asked for the inquiry to be postponed to give them some preparation time.
7. I was not prepared to agree an adjournment. The operator had known since around 7 April that there was to be an inquiry on 17 May. It had known that a brief was being sent but it failed to act on the Royal Mail “you were out” delivery slip and pick it up from Royal Mail. It must have been aware of the substantive issues, as these were itemised in the call-up letter which it **had** received and were detailed in the traffic examiner’s operator visit report which had been given to the operator in November 2017.
8. Despite the call-up letter asking for evidence of finances a week in advance of the inquiry, ie by 10 May 2018, no evidence was provided.

### *Holding of public inquiry*

9. The inquiry was held in Birmingham on 17 May 2018. Traffic examiner Marianne Hyde attended. Neither Ms Butler nor Mr Hudson attended, and driver Darren Batkin also failed to appear for his driver conduct hearing. I have therefore proceeded to take a decision on the written evidence available.

### **Findings**

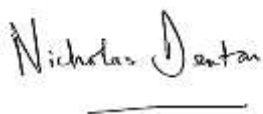
10. After considering the evidence I have made the following findings:
  - i) there has been a material change to the licence (Section 26(1)(h) of the 1995 Act refers). Lucy Butler’s letter authorising Stephen Butler to speak on her behalf was not signed and no evidence has been presented of her long-term sickness. I

noted that TE Hyde had only ever dealt with Stephen Hudson, even when she visited Mr Hudson and Ms Butler's place of residence in November 2017. I further noted that the registered keeper of one of Lucy Butler's two specified vehicles, BX06 JYC is "Skyrise Scaffold Ltd". There is no company of this name recorded at Companies House but a company named Skyrise Scaffolding Ltd was incorporated on 5 January 2018. The sole director is a James Peter Carpenter. Mr Carpenter is also the sole director of Carpenter Construction Ltd, which company was the previous registered keeper of the vehicle. It seems clear that the "Skyrise Scaffold Ltd" which is the registered keeper of BX06 JYC is in fact Skyrise Scaffolding Ltd. I also noted that Lucy Butler's vehicle N151 XJA (specified on the licence at the time of the stop on 27 June 2017) was, according to the photographs in TE Hyde's report, in the livery of "Skyrise Scaffolding Limited". I further noted that the registered keeper of the operator's other currently specified vehicle, BT57 RHY, is "Steve Paul Hudson". On the balance of probability, in the light of the evidence of operations by a limited company and the lack of evidence of any actual involvement in the operator licence by Lucy Butler, I conclude that a change of entity has occurred;

- ii) the operator has failed to fulfil its undertaking to ensure the lawful driving and operation of its vehicles (Section 26(1)(f) of the 1995 Act refers). The 10 tonne vehicle N151 XJA has been driven frequently both by Darren Batkin and by Stephen Hudson, neither of whom is qualified to drive any vehicle over 7.5 tonnes.
- iii) the operator's servant Darren Batkin has been convicted of driving otherwise than in accordance with a licence and of making a false tachograph record. Neither conviction has been notified to my office by the operator, although this is a requirement;
- iv) the operator has failed to fulfil its undertaking to ensure the observance of rules relating to drivers' hours and tachographs. TE Hyde identified 93 tachograph offences which the operator failed to identify because it was not carrying out any analysis of the tachograph charts;
- v) the operator lacks the required financial resources to support a licence for two vehicles (Section 26(1)(h) refers). No evidence of financial resources has been submitted;
- vi) the operator, Lucy Jayne Butler, is not fit to hold an HGV operator's licence (Section 13B and 26(1)(h) refer). I make this finding because, despite attending an operator licence management course at my behest at the start of the licence, she put no effective measures in place either to identify and prevent drivers' hours infringements or, even more seriously, to ensure that drivers who drove the 10 tonne vehicle had the necessary entitlement to do so. Moreover, I very specifically granted the licence to her, not to Stephen Hudson who had previously had a licence revoked and who was and still is disqualified from being the director of any company. I now find that Mr Hudson has been the de facto operator, as he is the person who has dealt with DVSA and with my office and who is the registered keeper of one of the operator's two vehicles (Skyrise Scaffolding Ltd being the other). I have been misled by Lucy Butler;
- vii) no maintenance records or driver defect reports were presented, so I am unable to find that vehicles are being kept fit and serviceable.

## Decisions

11. Before coming to a decision on what to do about this licence I carried out a balancing act. On the negative side were the findings above. The operator's failure to appear prevented it from putting forward any mitigating evidence.
12. It is clear from the above that Lucy Jayne Butler is not in control of the licence and is not fit to be so. There are no funds to support the licence. Revocation is the only possible outcome in these circumstances: having been misled at the previous inquiry in January 2017 I have no confidence that this operator is likely to comply in the future. Its very poor compliance record means that it deserves to go out of business. I am revoking the licence from 0001 on 19 May 2018. I am unwilling to allow the normal period of grace in which to wind down the business as I have no evidence at all that it is capable of doing so in a way which would not pose too great a risk to road safety.
13. I have considered whether to disqualify Lucy Jayne Butler under Section 28 from holding a licence in the future. Her failure to manage this licence properly (or at all), and the serious issues of non-compliance which this failure has caused, justify a period of disqualification. In deciding upon the length of this period, I have taken account of paragraph 93 of the STC's Statutory Guidance Document 10. This posits a starting point of between one and three years for a first public inquiry (and this is the first into the existing licence as opposed to the application) but a longer period of between five and ten years where an operator has allowed drivers to falsify records. Driver Darren Batkin has done precisely that – he created false records (by filling in tachograph charts in the name of Stephen Hudson) and lied to a DVSA examiner in an attempt to hide the fact that he was not permitted to drive his vehicle. I am imposing a disqualification period of five years upon Ms Butler, as being at the lower end of the scale applicable where drivers have been allowed to falsify records – this is because I consider that the falsification is likely to have arisen through Ms Butler's negligence and non-involvement rather than to have been a deliberate act on her part.
14. Because I have found that Stephen Hudson is the de facto operator of this licence, the question also arises of his potential disqualification under Section 28. Because the call-up letter did not specifically alert him to this possibility, I am prepared to give him an opportunity to attend a hearing to put his case.
15. At the parallel driver conduct hearing, I revoked Darren Batkin's provisional C category entitlement and disqualified him from reapplying for it for five years.



Nicholas Denton  
Traffic Commissioner  
17 May 2018