



WEST MIDLANDS TRAFFIC AREA

DECISION OF THE TRAFFIC COMMISSIONER

PUBLIC INQUIRY HELD IN BIRMINGHAM ON 18 JUNE 2018

OPERATOR: DAVID DAVIES T/A WEM DAVES TRANSPORT

Decision

1. The licence is revoked with effect from 0001 hours on 20 July 2018 pursuant to Section 17(3)(aa), (c) and (d) of the Public Passenger Vehicles Act 1981.
2. Pursuant to Section 28 of the Transport Act 1985, David Davies is disqualified for a period of three years from holding or obtaining 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. The disqualification takes effect at 0001 hours on 20 July 2018 and expires at 0001 hours on 20 July 2021.

Background

1. David Davies trading as Wem Daves Transport holds a restricted public service vehicle operator's licence for one vehicle. The licence was granted in January 2015.
2. On 20 December 2017 the operator's 16 seater minibus, driven by David Davies's brother Colin Davies, was checked by DVSA traffic examiner Marianne Hyde at Ludlow Racecourse. Ms Hyde found the following issues:
 - i) Colin Davies held a D1 driving entitlement with a 101 restriction code, meaning that he was not permitted to drive vehicles on hire and reward work;
 - ii) Colin Davies stated that his driver CPC card was at home but it later transpired that he did not have a driver CPC at all;
 - iii) Colin Davies was not using a tachograph for the journey;
 - iv) the vehicle held a class 5 MOT (for private vehicles) rather than the required PSV MOT certificate;
 - v) the licence disc in the windscreen was a photocopy, not the original.

3. Colin Davies denied that he was driving for hire and reward, stating that he was driving some mates to the races. Pressed to name them, he named two and stated that the other passengers were friends of theirs.
4. The operator, David Davies, who was also present at the racecourse driving an 8-seater private hire vehicle, was interviewed by Marianne Hyde. She noted that an entry in David Davies's diary for that day read "x 20 both of us. 10am. James Holyoak + Parker Ltd. Charlotte Chalrey [phone number]. Fox Hales + Holly Bank Ruewood then Battlefield offices. To Ludlow Races. 5pm return. £400 both buses." None of these names tallied with the names of Colin Davies's two "mates" given by him earlier. To her suggestion that this appeared to be evidence that a hire and reward trip was being undertaken David Davies replied that the 8-seater driven by him was being charged for but that the 16-seater driven by Colin Davies was being provided free of charge. Colin Davies had not therefore required an unlimited D1 licence nor was he required to use a tachograph as the journey was not for hire and reward.
5. Later in the interview David Davies explained that, when the booking had been made two weeks previously, the customers were pondering whether just to have the 16-seater. It was "hit or miss" whether they needed the 8-seater, which he described as "the extra complimentary vehicle." This appeared to contradict his earlier statement that it had been the 16-seater which had been provided on a complimentary basis.

Public inquiry

Call to public inquiry

6. I was concerned by DVSA's report and decided to call the operator to a public inquiry. The call-up letter was sent on 1 May 2018, citing Sections 14ZB, 16(1), 17(3)(aa), (c) and (d) of the Public Passenger Vehicles Act 1981 and Section 28 of the Transport Act 1985. The call-up letter asked Mr Davies to bring various maintenance and drivers' hours records.

Holding of public inquiry

7. The inquiry was held in Birmingham on 18 June 2018. Present were David Davies and his wife Pauline Davies and DVSA traffic examiner Marianne Hyde.
8. David Davies had brought copies of drivers' licences and CPC cards and driver defect reports for the last three months (the call-up letter had asked for six months). However, he had not brought the requested safety inspection reports from the last 12 months or tachograph charts for the last six months. He stated that he had not read the call-up letter properly as he had been poorly.

Evidence of David Davies

9. I put it to Mr Davies that the diary entry quoted above suggested that the operation on 20 December had been for hire and reward: "£400 for both vehicles". Mr Davies stated that the passengers had been conveyed to the racecourse in two 8-seater vehicles: his own and one run by another operator to whom he had sub-contracted the work. The 16-seater had been used by Colin to bring his friends. Colin was not a licensed private hire driver so could not drive the 8-seater vehicle.
10. I asked David Davies why he had not mentioned the second 8-seater to Marianne Hyde when interviewed by her at the time or at any time subsequently. He said that he had thought it should be obvious to her, with the second 8-seater parked next to his at the race course, what the arrangements were.
11. Mr Davies further stated that he had lost his original disc in a fire and had used a photocopy of the disc thereafter. He had not got round to applying for a new one.

12. He had not known that a PSV MOT rather than a Class 5 MOT was required. He had put the vehicle through the correct PSV MOT on 23 January 2018. The vehicle had not operated between the stop on 20 December 2017 and the MOT on 23 January 2018. I took him to the odometer readings which showed that the vehicle had driven 2929km between the two dates. Mr Davies stated that this had all been private use.
13. David Davies stated that he had put matters right straight away once his attention had been drawn to them. He was trying to be a compliant operator: many of his competitors were not.
14. I adjourned the inquiry in order to reach a written decision.

Further information

15. Later that day, my clerk drew my attention to the Facebook page of "Wem Dave's Transport". One customer review dated 15 October 2017 read: "2nd time we've used Dave's transport. Took us to monmore green (sic) yesterday picked us up and collected us on time. Very friendly and reliable you can't ask for more. Will definitely use again and recommend. Thanks DAVE and Colin." Another customer review dated 19 February 2017 reads: "The lovely Colin picked us up on time and quite happily dropped everyone home on their doorstep despite it meaning 5 separate drop offs and all for a very good price. I would not hesitate to use again."
16. The clear implication of these reviews was that Colin Davies has on several occasions driven passengers for hire and reward (while lacking the entitlement to do so), an allegation which was denied by David Davies. Through my clerk, I therefore asked David Davies for his comments on this further information. Mr Davies responded the next day, stating that he himself used the names of both David and Colin to customers for safety reasons, depending on how secure he felt: one of his minibuses had previously been burnt out in an arson attack (photographs were provided).

Findings

17. Having considered all the evidence I have reached the following findings:
 - i) on the balance of probability I find that the 16 seat minibus RX54 GDZ was being operated for hire and reward on 20 December 2017. Mr David Davies's claim that the customers had paid £400 to hire the 8-seater and that he had provided the 16-seater free of charge is, frankly, risible. Clearly the charge covered the hire of both vehicles. I was equally unpersuaded by the operator's claim that the hire was for two 8-seater vehicles and that he had brought in a sub-contractor to operate the second vehicle. He made this claim neither at the time or subsequently: it was only raised at the public inquiry and was completely unsupported by any evidence in the shape of a contract, witness statement from the other claimed operator etc. The entry in the diary "both of us" and "£400 both buses" is a clear reference to both drivers David and Colin Davies driving the two vehicles (the 16 seater minibus and the 8-seater) for a consideration of £400. There is no other credible explanation;
 - ii) Colin Davies has driven on a number of occasions for hire and reward, not only on 20 December 2017. Customer reviews refer both to Dave and Colin and one review refers to both Dave and Colin driving, making Mr Davies's explanation that he used both names highly improbable;
 - iii) having concluded that the 16-seater was being operated for hire and reward when inspected on 20 December 2017, it therefore follows that Colin Davies should have been in possession of an unrestricted D1 category licence and a

driver CPC qualification. He lacked both. The operator was therefore failing to fulfil his undertaking to ensure the lawful driving of vehicles (Section 17(3)(aa) of the 1981 Act refers);

- iv) the 16-seater vehicle had the wrong class of MOT. Over an extended period of time David Davies transported passengers in a vehicle which was supposed to have tested according to PSV testing standards but which in fact had been tested only for private use. As a PSV operator he should have been fully aware of the requirements. He has failed to fulfil his undertaking to ensure the lawful operation of vehicles;
 - v) the operator has also failed to fulfil his undertaking to ensure the observance of drivers' hours and tachograph rules. Colin Davies was not using a tachograph on a journey when EU rules required him to do so. The vehicle's tachograph calibration was also out of date;
 - vi) I found no evidence to suggest that David Davies had been operating more vehicles than he was entitled to. However, his photocopying of a disc is a serious offence under Section 65 of the 1981 Act and there is no excuse for not getting around for more than a year to applying for a replacement disc for the one which was lost in a fire;
18. Mr Davies did not read the call-up letter with sufficient thoroughness to bring any of the maintenance or drivers' hours records which I had requested. There was therefore no evidence available as to the frequency with which his vehicle is given safety inspections, or the current drivers' hours infringement levels. His failure to read the letter properly speaks of a certain slapdash approach to the regulatory system.
19. I carried out a balancing act to consider whether David Davies has lost his repute. On the negative side are the findings above and the fact that Mr Davies has consistently sought to mislead both DVSA officials and myself about the operation for hire and reward on 20 December 2017 and more generally. On the positive side is the fact that the vehicle's tachograph was recalibrated the day after the stop and was (eventually) given the correct MOT test. But I conclude that these positive factors are heavily outweighed by the illegal operation referred to above and by David Davies's attempts at obfuscation. I conclude that Mr Davies is not a person whom I can trust to comply with the rules in future: he is not of good repute.

Decision

Revocation of the licence

20. The operator has permitted a driver to drive paying passengers without the required restriction-free D1 driving entitlement, without the required driver CPC, without using a tachograph and in a vehicle lacking the correct category of MOT. He has been untruthful to DVSA and again at the inquiry. Revocation of the licence is an entirely merited outcome: the operator deserves to go out of business. The revocation will take effect at 0001 hours on 20 July 2018.

Disqualification – operator

21. Because of the serious nature of the non-compliance, which has put at risk the safety of passengers, and because of his dishonest attempts to cover this up, I have decided to disqualify David Davies from holding or obtaining an operator's licence and from being the director of any company holding or obtaining one. In deciding upon the length of his disqualification, 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 (which this is). Because of the multiple compliance failures and

the untruths which Mr Davies told in an attempt to conceal them, I have decided upon a disqualification at the upper end of this range. I am disqualifying him for three years. This is a necessary period during which, if Mr Davies ever wishes to return to the industry, he should build up his knowledge of PSV operator requirements from its present very low level and revise from the ground up his attitude to the importance of compliance and being honest with DVSA officials and traffic commissioners.

A handwritten signature in black ink that reads "Nicholas Denton". The signature is written in a cursive style with a large initial 'N' and 'D'. Below the signature is a horizontal line.

Nicholas Denton
Traffic Commissioner
19 June 2018