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DECISION OF THE TRAFFIC COMMISSIONER FOR THE NORTH WEST OF ENGLAND

In the matter of
Public Passenger Vehicles Act 1981 (the 1981 Act)

BRYAN JENNINGS
PC2002750

Public Inquiry at Golborne
on 30 July 2018

Decision:

The application for a restricted PSV operator's licence is refused in accordance with Section 13 (3) (b) and 14ZC (1) of the Act.

Background

1. Bryan Jennings, a sole trader, is an applicant for a new Restricted Public Service Vehicle Operator's licence for 1 vehicle. The application was received on 19 January 2018, although Mr Jennings had begun filling in the application some 10 months earlier on 10 March 2017.
2. He was called to Public Inquiry because of concerns about his ability to meet the "main occupation rule", compliance with the law and financial standing. He attended before me at Golborne on 31 July 2018, after an earlier adjournment at his request after an accident.
3. I allowed a period of 7 days to Mr Jennings after the conclusion of the hearing in order that he might make available to me his response to a letter from the Central Licensing Office, which had not been included in the brief for the hearing. This was produced in timely manner, I took it into account along with a letter concerned with the provision of the vehicle to be nominated, together with a spreadsheet which I

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took to contain actual income and expenditure data for the financial year 2017 – 2018 in respect of the existing taxi business.

4. Being Bryan Jennings' application, the burden is upon him to satisfy me that he meets the requirements of the licence. He gave evidence and I was able to ask questions.
5. Whilst I had been satisfied on the evidence produced financial standing was met, I have not been satisfied that he has discharged the overall burden and I therefore refuse the application.
6. My reasons for reaching such a conclusion are set out in paragraphs below for his assistance and understanding. I am disappointed that Mr Jennings has felt that the conduct of the hearing has made him feel like a criminal. Whilst difficult and sometimes uncomfortable questions need to be asked in an inquisitorial environment, this is never my intention. I found that Mr Jennings was open and straightforward with me in the hearing. I do not find his honesty is in doubt, although I do point below to a lack of candour during the application process, which was of concern since it goes to trust and confidence.
7. As far as the main occupation requirement is concerned:
 - i. When the application was submitted, Mr Jennings listed both electrician and mechanic as his main occupation (sic). He also referred to his voluntary work for a Section 19 permit holder but made no reference whatsoever on the application to taxi driving (as a PHV licence holder);
 - ii. Pressed as to why this was, because on a subsequently produced P60 for the financial year 2016-2017 it was clear that this self-employment with a reported turnover of £{REDACTED} and profit of £{REDACTED}, this was a substantial income source, no cogent explanation other than mistake and naivety could be offered;
 - iii. The estimates now provided for taxi driving in 2017 - 2018 revealed that on turnover of £{REDACTED}, a profit may be declared of £{REDACTED};
 - iv. There appeared to be some acceptance that his delay in completing his application led to its submission without adequate care;
 - v. Further from what he told me and what was contained in written evidence (accepted by him), I was satisfied that not recording taxi-driving was a device to exclude other driving carried out, which he believed might affect his application;
 - vi. I concluded that including other occupations on the form was probably calculated to obscure that fact, since the tax return itself referred to the electrician role as being dormant and in fact generating a £{REDACTED} (loss). The work as a mechanic was declared as accruing a profit of only £{REDACTED};
 - vii. The applicant estimated that net profit (adjusted for costs to be split between taxi work and PSV work) for the envisaged PSV work would be £{REDACTED} for a 12 month period.
8. As can be seen the potential profit to be made from taxi-driving (£{REDACTED}) would provide profit at a closely comparable level to that estimated for PSV work (£{REDACTED}). The most recent data suggests that PSV work would exceed that for PHV work. I am not satisfied on balance, even taking into account the

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uncertainties of how work might flow that PHV activity would necessarily represent his main occupation. The margins are so narrow that I cannot find the test to be met.

9. The finding is compounded by the applicant's lack of candour in his dealings during the initial part of the application process, albeit that when challenged on the matter in the hearing that it was to his credit that there was an acceptance of the position. As has been said repeatedly in this jurisdiction, the operator licensing system is based on trust and confidence: regrettably, I find mine has been seriously undermined.

10. As far as compliance with the law is concerned:

- i. Evidence of a "typical month" of taxi work was provided for June 2018. I noted that this evidenced only 3 days upon which no such work was undertaken;
- ii. I am not satisfied that if this pattern were to be repeated following the grant of a licence that the operator would ordinarily be capable of meeting the daily, weekly or fortnightly rest requirements of a PSV licence holder.

11. I therefore also refuse the application for a failure to satisfy me that the legal requirements would be met in terms of drivers' hours' rules.



Simon Evans
Traffic Commissioner
for the North West of England
14 August 2018