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DECISION OF THE TRAFFIC COMMISSIONER FOR THE NORTH WEST OF ENGLAND

**Musa Foods (UK) Limited
OC1101967**

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

Public Inquiry at Golborne
on 4 June 2018

Decision

On findings in accordance with Section 26 (1) (b), (c) (iii), (ca), (f) and (h) of the Act, the latter in respect of both fitness and finance, I revoke this licence with effect from 27 July 2018 at 23.59 hours.

In consequence, the application to vary the licence is refused.

Background

1. Musa Foods (UK) Limited (OC1101967) is the holder of a Restricted Goods Vehicle Operator's Licence authorising the use of 5 vehicles; the licence was granted in June 2011. The sole director is Siraz Musa.
2. An application by the operator to vary the licence by increasing fleet size to 6 vehicles had been made on 18 October 2017: it fell for my consideration at this hearing.
3. It has been accepted that the licence has a "chequered" previous regulatory history.
 - Granted at Public Inquiry with undertakings in 2011;
 - A strong warning letter was issued in 2013;

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- At a Public Inquiry in July 2016, this licence was curtailed from 6 vehicles to 4 vehicles for a 28 day period with further undertakings attached to the licence;
- A preliminary hearing set down for November 2017 was vacated following the operator's agreement with regard to sums payable to HMRC.

The Calling-In

4. The calling-in to this Public Inquiry was principally triggered by three encounters with the operator's vehicles:
 - On 12 July 2017, when a check of the drivers' hour's record of Driver Ikram Patel revealed a series of rest offences in the period 14 June 2017 to 30 June 2017. The offences came to be committed as the driver was providing his services to both Preston Halal Meats Limited, as well as this operator without management of the implications of working for another operator on the same day or a following day. It was also revealed that the Vehicle Unit of one of the operator's vehicles had not been downloaded for a period well in excess of 90 days;
 - On 27 December 2017, when a DVSA stopping officer concluded that the driver of the operator's vehicle with Reg No. PN06 UTH had deliberately evaded more than one attempt to bring that vehicle into a DVSA check site; and
 - On 27 April 2018, when Driver Abdullah Haji Patel was not in possession of a driving licence carrying the category C1 entitlement for the vehicle he was then driving.
5. Within the second of those allegations above, following investigation, there were disclosed offences of driving without a card inserted and driving carried out at a time when another driver's card was in use. Those matters had been referred for prosecution but none had taken place. The DVSA stopping officer had also referred to his belief that the driver who had been at the wheel and had evaded attempts to bring him into the check site was not the driver who had shortly afterwards presented himself with the vehicle at the site. The operator had denied that such a change of driver had occurred.

The Public Inquiry

6. So it was that Siraz Musa, director, appeared before me at a Public Inquiry on 04 June 2018 at Golborne. The company was represented by Scott Bell, Solicitor with Grahame Robinson, Transport Consultant. Vehicle Examiner Mitchell (who had been deployed as the stopping officer on 27 December 2017) and Traffic Examiner Ainslie were present.
7. For reasons that will become clear, I do not set out in full the details of the evidence that I heard in the case.
8. At the conclusion of the oral evidence, in his submissions, Mr Bell asked for advice as to how he might focus his representations on behalf of the operator. Implicit in his approach was an acceptance that this was a licence that had "run its course"

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and that it would, in the light of the evidence and the likely findings, be appropriately brought to an end. In short, however, Mr Musa was keen to be availed with an opportunity to make a fresh application for an operator's licence in the name of the company, in which I might be persuaded that I could have greater trust and confidence.

Findings

9. My findings from the written and oral evidence may be summarised as follows:

General matters:

- The financial calculation carried out based on materials provided falls far below the financial resource requirement of £11,600 but I have been offered realistic assurances that a sum sufficient to meet financial standing is presently held outside the company and could be paid in without problem;
- The operator has failed through its Director and those he has charged with day-to-day management of the licence, to heed the warnings and act fully upon the advice on various matters set out by DTC Harrington in her Public Inquiry decision in September 2016;
- Serious trust and confidence issues have arisen because of Mr Musa's failure to exercise proper oversight over transport operations including drivers' hours' compliance and his admission that to all intents he left Driver Jiwa to manage operations without supervision, when he was not equipped to do so effectively.

Evasion of the stopping vehicle:

- I am satisfied on the evidence of VE Mitchell and the reported admissions made to Siraz Musa that there was a deliberate attempt by the driver to evade the stop;
- Whilst I find it more likely than not that VE Mitchell's evidence was credible that the driver he initially identified as driving of the vehicle on 27 December 2017 was different to the driver who later presented himself at the check site, I am unable to make findings as a result thereof, since that issue was never fully investigated by the TE, who accepted that the version offered by Driver Jiwa was true;
- For the purpose of these proceedings, I accept the admission made by Driver Jiwa that it was he that had been driving the vehicle throughout.

Offences disclosed when vehicle was presented at the check site:

- I find, as was not disputed, that the vehicle was driven by Driver Jiwa rather than Siraz Musa, even though his driver card was inserted;
- I find, as was not disputed, that the vehicle was driven by Driver Jiwa on 27 December 2017 with no card inserted;
- I find that by asserting that tachograph malfunction would explain the presence of his driver card apparently being in use when he was not in the vehicle, Siraz Musa has misled a Traffic Examiner;
- I find that Siraz Musa failed to correct that misleading explanation when he became aware of Driver Jiwa's acceptance that he had driven the vehicle for a period with his director's card in the tachograph;

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- I find that Siraz Musa has failed to manage Driver Jiwa and made decisions about his retention in a key role as responsible person under the licence, even after Driver Jiwa had lied to him and had admitted he knew that he was intended to follow the stopping car.

Consideration

23. Management, even of a 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 clearly a profitable business, and carries special challenges. The more so, when there are several active sites and the director's knowledge and understanding of licence expectations remain limited. 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. Hitherto there is little evidence of this being achieved in this business over time.
24. In consequence of my findings, I find that the interests of road safety and the protection of the public, which include the duty to comply with the reasonable requests of DVSA will have been endangered.

Decision

25. 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.
26. 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 and hence the fitness and serviceability of vehicles is concerned.
27. 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 handling the events leading to the current proceedings would convince me that Mr Musa, and hence Musa Foods (UK) Ltd can be trusted to operate this licence compliantly, even when I take into account the positives. 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.
28. 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 may be maintained. I am satisfied that making an order for revocation is entirely appropriate and proportionate outcome. Fitness is lacking. There is limited evidence of financial standing and systems, which ensure compliance, are not shown to be fully in place.

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29. On balance however, I conclude 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. The recent decision to transfer responsibility for preventive maintenance inspections to Preston Bus represents a positive first step, as is the decision to stand down Driver Jiwa from any licence compliance responsibility. The offer, albeit somewhat late in the day, to change internal arrangements and to dedicate resource exclusively to licence compliance is something that I am prepared to accept.
30. I shall therefore revoke this operator's licence. There has been a serious failure to act decisively to save the licence following the clear warnings set out in the 2016 Public Inquiry. It is entirely proportionate that the operator suffer the time, cost and inconvenience that an 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.
31. If a fresh application is to be made, as would appear to be the intention here, I offer the following advice as to what, other things being equal, might be acceptable in regulatory terms:
- a. Any new licence would be restricted to the 5 vehicles currently permitted under this licence. I would not be prepared in current circumstances to increase its scope;
 - b. The operator would be required to contract with (or employ) on a continuing basis experienced and suitably qualified professional transport expertise in the business attending for not less than 8 hours per week. Whilst my preference would be for that post holder also to be a Transport Manager CPC holder, appropriate experience and competence might also be capable of achievement by the other means but this would need to be demonstrated to the Traffic Commissioner considering the application. This requirement to be embodied within an ongoing licence undertaking;
 - c. Financial standing is required to be met through the provision of a deposit into a dedicated bank account in the company's name sufficient to meet that requirement on a permanent basis;
 - d. The operator will commission at its own expense an independent operator compliance audit by a trade body or consultancy of repute in the months of December 2018 with an audit report presented by 15 January 2019. Such a report should be accompanied by the operator's proposals to address any recommendations contained therein. It is noted that Grahame Robinson has been supporting this operator in setting up systems for some time, and is assisting in the procurement of suitable transport expertise, in consequence, in this particular case, the Traffic Commissioner directs that the audit report be prepared by another supplier.
32. I am prepared to allow a short period to pass before the revocation will take effect, namely a period of about 7 weeks that is ending on 27 July 2018 at 23.59 hours, thereafter this licence will be of no effect.
33. Due to the revocation of this licence, the application for variation of it is refused.

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A handwritten signature in black ink, appearing to read 'Simon Evans', with a horizontal line underneath.

Simon Evans
Traffic Commissioner
for the North West of England
5 June 2018