



IN THE WELSH TRAFFIC AREA

Goods Vehicles (Licensing of Operators) Act 1995 (“the Act”)

PUBLIC INQUIRY

**SARAH VANESSA OWENS AND GARETH LYN OWENS
Trading as GL & SV OWENS**

OG1132587

TRANSPORT MANAGER – SARAH VANESSA OWENS

BEFORE

**ANTHONY SECULER
DEPUTY TRAFFIC COMMISSIONER**

HEARD AT CARDIFF MAGISTRATES’ COURT

ON 5TH OCTOBER 2018

**Decisions made in respect of Sarah Vanessa Owens and Gareth Lyn Owens t/a
GL Owens and SV Owens.**

1. The operator’s licence is revoked under section 27 of the Act, the mandatory requirements, under section 13A(2)(b) – good repute; section 13A(2)(c) - financial standing; and, section 13(A)(2)(d) – professional competence no longer being met.
2. The licence is also revoked under the discretionary grounds in section 26(1)(a),(b),(c)(iii),(e),(f) and (h).

3. Sarah Vanessa Owens has lost her good repute and professional competence to be a Transport Manager and is disqualified indefinitely from acting as a Transport Manager under paragraph 17B(2) of Schedule 3 of the Act. Having completed her examinations in 1994 she would be required to re-sit her CPC as a rehabilitation measure before applying to cancel the disqualification order.

4. Gareth Lyn Owens and Sarah Vanessa Owens are disqualified under section 28 of the Act from holding or obtaining an operator's licence for a period of 5 years.

5. All determinations will come into effect on 12th October 2018 in order to enable the decisions to reach the parties and immediate arrangements to be made.

Background

1. Sarah Vanessa Owens and Gareth Lyn Owens ("the operators") are the holders of a Standard National Operator's Licence authorising 3 vehicles and 1 trailer. The licence was granted on 5th November 2014.
2. The designated transport manager is Sarah Vanessa Owens who gained her CPC qualification in 1994.
3. Following the issue of an 'S' marked prohibition on 26th April 2018, DVSA commenced a maintenance and tachograph/drivers' hours etc. investigation in May 2018. The operators were found not to be using their designated operating centre and contact was eventually made with the Transport Manager at their business address in Aberporth.
4. The investigations revealed major, widespread failings in management of the operator's licence, vehicle maintenance arrangements and monitoring of drivers' hours, tachographs etc. The operators failed to respond to the formal notice of shortcomings issued which required a response within 14 days.
5. By a call-up letter dated the 24th August 2018 the operators were called to attend a public inquiry and advised of the Traffic Commissioner's powers with regard to their licence under sections 26, 27 and 28 of the Act.
6. A separate call-up letter was issued to the Transport Manager advising her of the Traffic Commissioner's powers in respect of her professional competence and repute under Schedule 3 of the Act.

7. The operator's licence had, in fact, been previously revoked by the Traffic Commissioner in April 2018 under section 26(1)(h) of the Act, following letters issued by DVSA and the Office of the Traffic Commissioner (OTC) warning of the consequences of using unspecified operating centres. Letters issued on 9th November 2017, 24th November 2017 and 7th March 2018, and an email sent on the 7th, were ignored by the operators and it was not until receipt of the notice of revocation dated 12th April 2018 that the Transport Manager contacted the OTC and sought re-instatement of the licence pending this public inquiry.

The Public Inquiry

8. Both partners attended the public inquiry accompanied by Mr Aled Owen, Solicitor. DVSA Examiners, Wayne Williams ("VE Williams") and Christopher Matthews ("TE Matthews"), attended on behalf of DVSA.
9. Mrs Kate McDonald, transport consultant, accompanied the partners.

Evidence and Findings

10. The statements of VE Williams and TE Matthews were accepted by Mr Owen, on behalf of the operators. I do not reproduce their evidence in full in this decision but summarise the key elements to substantiate my findings.
11. Similarly the evidence of the operators was contained in statements received by me shortly before the commencement of the hearing. Their statements and accompanying documents from Cameron McDonald, Presselli Transport Training Solutions, and Neil Thomas from NRT Consultancy, have been fully considered as part of this decision.
12. The call-up letter clearly instructed the operators to prepare evidence of their financial standing in advance of the hearing. The letter states;
"Before 28 September 2018, you *must*: Submit your financial evidence".

Notwithstanding this instruction, and any advice from their Solicitor, the operators had not brought evidence to the inquiry. Assurances were given that evidence could be produced within days of the inquiry.

13. The statements and evidence from the operators did not challenge any of the factual findings in the examiners' statements and the examiners were not questioned on their evidence.

14. I therefore find the following grounds for action as recited in the call-up letter made out:

1. Unauthorised use of an operating centre (Sec. 26(1)(a) of the Act) –
The operators and their vehicles could not be found at the designated operating centre. Vehicles have been parked at another operator's centre, at Crymych and at the operators' home address in clear contravention of the legislation.
2. Operating more vehicles than authorised to do so (Sec. 6 of the Act) –
The Transport Manager was unable to categorically state how many vehicles were used by the operators saying; "I think about 6", demonstrating a clear lack of management awareness and control. Safety inspection documents for 8 vehicles and 1 trailer were kept by the maintenance provider and no VOR (vehicle off-road) system was in place. The operators both admitted to using 5 more vehicles than authorised on the licence and the most damning aspect of that admission is that the unlawful use was continuing up to and including the day of the inquiry, notwithstanding the involvement of Mr Owen, Solicitor, Mr Thomas, transport consultant, and Mrs McDonald, transport consultant, on behalf of the operators.
3. Prohibitions (Sec. 26(1)(c)(iii) of the Act) – The investigation was prompted by the issue of an "S" marked prohibition in respect of defective tyre, insecure steering and seat belt inoperative. Even with 48 hours' notice of the fleet inspection, the operators' vehicles received prohibitions on 4 of the 6 vehicles presented. 2 of those prohibitions were "S" marked indicating significant failings in

maintenance systems and 3 were “Immediate” prohibitions suggesting imminent risks to road safety. Prohibitions have also been issued in respect of tachograph not being fitted and failing to keep records of work. The most recent prohibition was issued on 25th September 2018 for serious offences of using the driver card of another, insufficient daily rest, excess driving and making a false record.

4. Fixed penalties (Sec. 26(1)(ca) of the Act) – Issued on 12th October 2017 and 28th March 2018 for driver offences.
5. False statements (Sec. 26(1)(e) of the Act) – The six weekly inspection schedule, committed to as part of the licence application, was clearly not adhered to. Intervals of 8 – 16 weeks were common for vehicles in regular use and the absence of a VOR system makes it impossible to confirm that longer intervals (20 -38 weeks) were due to vehicles being off-road. In leaving all the maintenance records at the providers, the Transport Manager demonstrated a lack of control over the intervals and the contents of the sheets. The use of the unauthorised operating centre is a further false statement of expectation.
6. Undertakings not complied with (Sec. 26(1)(f) of the Act) -
Vehicles have not been kept in a fit and serviceable condition - This is evidenced by the prohibitions (75% prohibition rate at roadside encounters), the state of the vehicles examined at the fleet check, the poor MOT pass rate (40% over the last 5 years), and the extended service intervals. One vehicle was fitted with an Adblue emissions cheat device showing a disregard for environmental damage as well as legal compliance.
The rules on drivers’ hours and tachographs have not been observed -
Vehicle unit have not been downloaded and reports from the Truetach have not been received despite an account having been set up in November 2017. The driver cards must be downloaded every 28 days. As a driver, Gareth Lyn Owens set an appalling example. The driver card for Gareth Lyn Owens had been downloaded only twice in 12

months, the second download being 167 days after the previous one. This confirms no effective monitoring of drivers hours which together with the limited influence of the allocation of work to drivers (contractors contacted the drivers directly) is described by TE Matthews as “potentially a deadly combination”. Page 9 of TE Matthews’ statement details alarming deficiencies in the systems for ensuring compliance with the Working Time Directive.

The Transport Manager failed to produce tachograph, vehicle and drivers’ records despite numerous requests.

The operators failed to keep adequate records of driver defect reports and safety inspections and the defect reporting system was clearly ineffective.

7. Material change in the circumstances of the licence holders (Sec. 26(1)(h) of the Act) – Using the unauthorised operating centres, using more vehicles than authorised, failing to specify vehicles on the licence and using untaxed vehicles on the public road.

15. **Gareth Lyn Owens** accepts using at least 5 vehicles more than the 3 authorised on the operator’s licence. He admitted to continuing to use excess vehicles up to the day of the inquiry. I find his explanation, that he had heard from unnamed third parties that applications were taking up to 7 months to be processed, unconvincing and unacceptable in any event. The process for compliant operators is straightforward and relatively speedy. The operators responded to immediate commercial opportunities without any regard for the requirements of the licensing regime which are designed to ensure that vehicle numbers are not increased without the operator demonstrating adequate finances, safe systems and satisfactory performance to safeguard the public. As an experienced operator, Gareth Owens would have been aware the partnership did not have these in place.

16. The operators deny knowledge of the Adblue emulator and maintain it was not fitted by them. Gareth Owens stated that the absence of Adblue receipts for that vehicle was masked within a global account but I concur with VE Williams that in

a properly managed operator's business, the cheat device would have been detected and its presence, including any emissions warning lights, reported by drivers.

17. In using unauthorised operating centres, Gareth Owens admitted to parking his own HGV outside his home which shows a flagrant disregard of the rules and for the environmental comfort of his neighbours. If they did not complain because this is a close community as stated by Gareth Owens, then he has abused that community goodwill.
18. Gareth Owens states that he was "shocked" by discovering the high failure rate on testing and arrangements have now been made for new maintenance contractors working to a four weekly schedule. Clearly the operator should have been aware of their MOT failures and should have been taking steps to rectify the maintenance regime prior to the investigation and call-up papers.
19. **Sarah Vanessa Owens**, outlined in her statement her family and professional background. She states that "there has not been any central issues with regard to the tachographs of the vehicles apart from this one incident". It is hard to attach any credit to this statement in the face of TE Matthews unchallenged evidence that no data has been downloaded from the vehicle units and driver cards have not been downloaded for months on end. The absence of more offences/prohibitions in those circumstances is likely to reflect good fortune and the absence of frequent DVSA encounters in the rural areas of Wales where they are based.
20. Similarly to her husband, Vanessa Owens should not have been surprised at the high MOT failure rate and she should have been monitoring the safety inspection schedule and the inspection reports that were left with the contractor.
21. Again, with regard to the Adblue emulator, the fact that there were "numerous drivers using the vehicle" is as much an indictment of the poor systems to identify and report obvious signs of emissions cheating, as mitigation.
22. My comments with regard to the parking of Mr Owens' HGV at the family home apply equally to Mrs Owens and the fact that he continued to park outside the

home contrary to her directions (para. 27 of her statement) shows her inability as Transport Manager to control her husband.

23. Mrs Owens refers to her position of trust and standing within her community and I have no reason to doubt that. However, her inability to manage this licence in any proper manner leaves me with no trust in her as a Transport Manager. She has personally failed to honour promises to produce documents to TE Matthews on repeated occasions and she has failed to ensure timely applications for vehicles to be specified, legitimate operating centres to be named and the correct number of vehicles to be authorised. She ignored letters proposing to revoke the licence in April 2018 and only replied to the OTC after revocation had taken place. Her explanation that she “misunderstood the system regarding a public review” is unconvincing, particularly having regard to her academic and professional background. The advice in the OTC email of 2nd May to specify the correct number of vehicles on the licence has clearly not been followed.
24. **Professional Competence** (Schedule 3, Sec. 27(1)(a) and 13A(2)(d) of the Act). I find that the serious, numerous and persistent shortcomings in the findings above must negate the good repute of the Transport Manager, Vanessa Owens.
25. Where drivers know that there are no systems in place for monitoring their driving hours, rest periods and working time, then offences such as those of the driver Geraint Tilley on 26th April 2018 and Richard Dimmick on 25th September 2018 will occur. Drivers who “pull” their driver cards to mask excess hours offences pose a serious threat to the lives of other road users and Transport Managers/operators who have no systems for monitoring possible offences are contributing to that threat.
26. The operators provided no effective training to drivers and there was no proper system for checking driving licence entitlements and endorsements. They could not even state with clarity the number of drivers employed by the partnership.
27. Up until the involvement of Mr Owen and transport consultants in September 2018, Mrs Owen had undertaken no continuous professional development since passing her exams in 1994 and it is clear that she has failed to provide continuous and effective management of the transport business of the

partnership. I accept that she has suffered periods of ill-health and has the demands of a large, young family but these cannot excuse the complete and long-standing dereliction of professional duties with regards to this licence.

28. Similarly, Mrs Owen produced at the inquiry vehicle files that had been created in the last few weeks. Of course the majority of those files are in respect of vehicles that are being used illegally and their production does little to offset the prolonged failings or to provide me with reassurance that compliance would be secured in the future by these operators.
29. **Good Repute** (Sec. 13A(2)(b) and 27 of the Act) – All of the failings which contribute to the clear loss of the Transport Manager’s repute must apply to the good repute of the partners.
30. TE Matthews states, “This operator is one of the worst I have seen in my DVSA career. There is a blatant disregard for rules, regulations and DVSA.” I would concur with that assessment and the continued use of the unauthorised operating centres and exceeding the number of authorised vehicles, up to the day of the public inquiry, shows a similar disregard for the office of the Traffic Commissioner.
31. There are few positives to weigh in the balance in considering the repute of the partners. TE Matthews comments that both partners were “pleasant” in their manner and this was evidenced at the public inquiry. However, they were wholly unconvincing in their assurances as to future compliance and they can hardly be said to have been co-operative. They persistently failed to produce records requested by the examiners, failed to respond to the shortcomings explanation request, ignored correspondence from DVSA and OTC regarding the revocation of their licence, and, their late instruction of Mr Owen led to documents being produced on the day of the inquiry which should have been sent in at least 7 days in advance. Financial evidence was not produced at all despite the call-up letter.
32. I have no hesitation in finding that both partners have lost their good repute notwithstanding the measures taken in the last couple of weeks as detailed below.

Decision and Reasons

33. In determining appropriate regulatory action I have regard to the positive measures taken by the operators in appointing professional consultants to offer ongoing training, support and monitoring. Vehicle files have been created and the operators are working with transport consultants, Mrs McDonald and Neil Thomas to implement the recommendations in Mr Thomas' audit report.
34. In addition, the operators have appointed a new maintenance contractor, attended training, and adopted a driver training programme. Applications have been submitted for the 2 operating centres being used and Truetac analysis is now taking place.
35. I note that Mr Thomas's report is dated 30th September 2018 and he still identifies many of the deficiencies found by the DVSA examiners in May 2018.
36. I regard the measures taken as "far too little, far too late" and they cannot offset the serious consequences for the partnership which has continued for up to 2 years to operate unlawfully. I give Mr Owens some credit for his openness in admitting his offending but that credit is limited by the high chance of detection and the seriousness of the blatant disregard for the rules and the law.
37. Similarly, the payment of a donation to the Ceredigion Wildlife Trust at the suggestion of Solicitors, does not offset the prolonged environmental and public health damage from the operators' vehicle fitted with the Adblue emulator. VE Williams states that the emissions device "typifies the blatant disregard to road worthiness compliance as demonstrated by the operator". He describes the ease of discovery and the photographs confirm the signs (emissions warning lights, soot residue on exhaust) that should have placed the operators and Transport Manager on notice, in addition to reports that should have been received from the number of drivers who used the vehicle.
38. At the very least, the improvements implemented in the last 2 weeks, and those promised in the statements, should have been part of a proactive response to the findings of the VE and TE's in May 2018 rather than ignoring the DVSA formal request. Even the vehicle files compiled by the Transport were only

completed shortly before the inquiry. I remind the operators of the standard undertakings they signed up to when applying for the licence in 2014.

39. The case of Priority Freight Limited and Paul Williams (2009/225) poses the question; “how likely is it that this operator will, in future, operate in compliance with the operator licensing regime?” My answer in this case is highly unlikely.
40. The partners have shown complete disrespect for the rules over a sustained period of time and having seen and heard the partners give their evidence I am far from convinced that any improvements made will be maintained beyond the date of the public inquiry. The limited influence of consultants, and his wife as Transport Manager, over Mr Owens is evidenced by his determination to operate at least 5 vehicles in excess of his lawful authorisation up to the day of the inquiry notwithstanding their advice to the contrary. Even Mrs Owens stated it was “difficult” trying to manage her husband and that she “ran round like a headless chicken” most days doing things that he was throwing at her.
41. The culture of non-compliance within this operator’s business is so deeply engrained that on the 25th September 2018, less than 2 weeks before the inquiry, a driver was stopped by DVSA using the driver card of another driver. The minimum rest period of 9 hours had been reduced to 3 hours and 14 minutes and the 10 hour daily driving maximum was exceeded by 4 hours and 15 minutes. These offences are of the most serious nature and reflect on the limited extent to which the partners control their drivers and their working arrangements up to this very moment in time.
42. The case of James Michael Fenlon t/a County Skips (2006/277) underlines that “trust is one of the foundation stones of operator licensing”. I do not trust the operators to comply with all the relevant laws, rules and regulations. They have shown scant regard for them in the past and I have no doubt whatsoever that Mr Owens, in particular, would take the first opportunity to ignore the rules if he saw a commercial advantage in doing so.
43. Annex 3 of the Senior Traffic Commissioner’s Statutory Document No. 10 sets out the “Starting Points for Regulatory Action”. It cannot be disputed that this

operator's conduct is in the "severe" category and that revocation and disqualification are appropriate starting points.

44. The case of Bryan Haulage No. 2 (2002/217) raises the fundamental question when considering regulatory action; "is the conduct of the operator such that the operator ought to be put out of business?" In addressing this issue the Priority Freight question is highly relevant as is the past conduct of the operators
45. DVSA examiners do not state lightly; "This operator is one of the worst I have seen in my DVSA career...In my opinion this operator is a rogue with a blatant disregard the rules, regulations and road safety". TE Matthews has appeared before me on many occasions over the years and I have found his approach to be balanced, objective and fair. Mr Owens took exception to the term "rogue" but I have to concur with TE Matthews, that the breadth and persistence of the offending in this case and the willingness to forego appropriate and necessary safety and compliance systems in order to pursue financial gain is one of the most serious cases I have dealt with and that the description "rogue operator" is entirely apposite.
46. The failings in this case, in terms of poorly maintained vehicles and unmonitored drivers committing serious drivers' hours offences such as those on the 25th September 2018, strike at the very heart of road safety and I consider that this operator is a serious and imminent risk to road safety.
47. The failings also seriously undermine fair competition and this is a case where honest, compliant operators are entitled to expect that non-compliant operators at the level of this partnership will be taken out of the industry. The operators have reaped considerable financial benefit by; avoiding excise duty on some vehicles, extended service intervals, poorly maintained vehicles, emissions cheating, no proper monitoring of drivers' hours and working time; ineffective transport management.
48. The engagement of reputable transport consultants shortly before a public inquiry (one at 4 hours per fortnight and one to undertake quarterly audits) cannot be seen to offset such prolonged and serious offending and persistent non-compliance. This is particularly the case where I do not believe Mr Owens

would follow their advice and the culture of non-compliance is so deeply embedded.

49. I determine that the conduct of this operator is such that they ought to be put out of business. Mr Owen, Solicitor, submitted that a curtailment from 3 to 2 vehicles would be the appropriate and proportionate way forward. Mr Owens in his evidence at the inquiry doubted whether the partnership could continue with less than 3 vehicles and the fact that he deliberately took the risk of operating 8 vehicles up to the inquiry date would seem to reflect this view. In any event, continuation of this licence cannot be allowed.
50. The operator's licence for GL Owens and SV Owens is revoked under section 27 of the Act, the mandatory requirements under section 13A(2)(b) – good repute; section 13A(2)(c) - financial standing; and, section 13(A)(2)(d) – professional competence no longer being met.
51. Although bank statements and full financial evidence were not brought to the hearing, I note that financial evidence was said to be available within days. I stress that satisfaction of the financial standing requirement for 3, 2 or indeed 10 vehicles would have no bearing on the outcome in this case.
52. The licence is also revoked under the discretionary grounds in section 26(1)-(a),(c)(iii),(ca),(e),(f) and (h).
53. The operators were warned in the call-up letter of the power to disqualify operators under section 28 of the Act. Gareth Lyn Owens and Sarah Vanessa Owens cannot be trusted to run a compliant operator's licence at the present time and in the foreseeable future. I weigh in the balance the positives asserted in their evidence and give some credit for their efforts prior to this inquiry date by reducing the disqualification to the minimum finite term commensurate with the scale of their failings. I see no reason to distinguish the length of disqualification between 2 partners who operate as a husband and wife team and share responsibilities.
54. Gareth Lyn Owens and Sarah Vanessa Owens are disqualified for 5 years from holding or obtaining an operator's licence under section 28 of the Act. After that period of absence and reflection they would still need to satisfy a Traffic

Commissioner that their approach to compliance has markedly changed and that they can implement and manage proper systems.

55. My concerns over the risks they pose to road safety at the present time, exemplified by the serious offences committed by one of their drivers on 25th September 2018, are such that the revocation must take place immediately rather than allowing for an orderly run-down of business. The operators have benefitted up to the day of the inquiry by running more vehicles than authorised and I am not prepared to allow them to benefit from their non-compliance for any longer than strictly necessary for them to receive this decision.
56. Having determined that Sarah Vanessa Owens is no longer of good repute or professionally competent, she is disqualified indefinitely from acting as a transport manager under paragraph 17B (2) of Schedule 3 of the Act. She would be required to re-sit her examinations before applying to cancel the disqualification order.
57. All determinations will come into effect on 12th October 2018. The operators have had more than sufficient time to be prepared and to make arrangements for this outcome. It should be clear to the operators that the prospects of delaying the closure of their business by applying for a stay pending appeal are negligible if not nil.
58. In view of the prolonged unauthorised use, warning is also given of the DVSA powers to impound any large goods vehicle found to be in use by the operators after the date of revocation and disqualification.

Anthony Seculer
Deputy Traffic Commissioner,
Welsh Traffic Area.
9th October 2018