



## **SOUTH EASTERN AND METROPOLITAN TRAFFIC AREA**

### **DECISION OF THE DEPUTY TRAFFIC COMMISSIONER**

**PUBLIC INQUIRY HEARD AT IVY HOUSE, IVY TERRACE, EASTBOURNE ON 18  
OCTOBER 2018**

**OK2010916 P ELSAGOOD TRANSPORT SERVICES LIMITED**

#### **Decision**

**I find that the applicant company has failed to satisfy the requirement to be of good repute to hold a standard operator's licence as a result of the previous convictions and other factors relating to sole director Peter Desmond Elsagood in accordance with Section 13A (2)(b) and Schedule 3 of the Goods Vehicles (Licensing of Operators) Act 1995.**

**This application for a licence is therefore refused.**

#### **Background**

- 1. This is an application by P Elsagood Transport Services Limited for a standard international licence authorising 4 vehicles and 4 trailers. The sole director of the applicant company is Peter Desmond Elsagood and the proposed transport manager is Mathew Hodgins.**
- 2. The issue to be determined at the public inquiry is whether Mr Elsagood as sole director is able to show that he has the level of repute required for his company to be granted an operator's licence of the type applied for. The issues relevant to his repute are previous convictions, one of which was disclosed on the application form, a previous bankruptcy, past history as the holder of an operator's licence and his involvement in three other companies which were the subject of a public inquiry on the 6 June 2018.**

### **Previous Convictions**

3. Mr Elsagood disclosed on the application form that he was convicted on the 17 February 2003 of conspiracy to import class A drugs (heroin and cocaine) and was sentenced to a period of 14 years imprisonment at Southwark Crown Court. Extracts from media reports of the case state that a lorry fitted with a false air tank had been used to commit the crime, the drugs found had a street value of £850,000 and the Judge when sentencing said that at least two trips had been made in the lorry.
4. In the process of preparation of the case in the Office of the Traffic Commissioner it was also discovered that Mr Elsagood had been convicted in 1991 of joint theft with another of a lorry trailer loaded with stolen mushrooms. This conviction had not been declared on the application form on the ground that it was "spent" and therefore not subject to the requirement to disclose.

### **Previous Bankruptcy**

5. Mr Elsagood disclosed on the application form that he had been declared bankrupt in 1999. He stated that this was result of customers not paying accounts that were due and subsequently produced a certificate of discharge from bankruptcy dated 10 May 2002.

### **Previous operator's licence**

6. Mr Elsagood applied for a sole trader licence in July 2002 and an interim licence was granted. The full grant did not follow and was refused on the ground that the transport manager had resigned and no replacement had been found. Mr Elsagood did not disclose the fact that he had previously held a licence on the current application form.

### **Attendance at public inquiry on 6 June 2018**

7. On the 6 June 2018 a conjoined public inquiry was held involving licence applications by KD Demolition Limited, Total Logistics Limited and MPS Freight Limited. In addition the existing licence held by K D Demolition Limited was considered as was the repute of Transport Manager Sarah Louise Allman. Mr Elsagood was called as a witness to the inquiry having previously been an employee of a linked company named MPS Enterprises. A transcript of the evidence heard at that inquiry was included in the bundle for the current hearing as was a copy of the written decision of the Traffic Commissioner Miss Sarah Bell.



## **The Public Inquiry**

8. Mr Elsagood attended the current public inquiry together with the proposed Transport Manager Mr Hodgins and both were represented by Mr Tinkler. A case summary with submissions had been submitted in advance of the inquiry together with a schedule of documents in support. I do not feel it is necessary to include all the details of the submission in my decision as these are a matter of record as is the evidence given at the inquiry. In summary Mr Elsagood confirmed the contents of the submission and in relation to the previous public inquiry he emphasised that his role in relation to MPS Enterprises was as an employee. He said that he had no knowledge of the arrangements being entered into by Finbarr McMahon whereby other businesses were offered a "sub-contracting" arrangement when in fact no licence was held by the company offering (MPS Freight Limited or Enterprises) or in other instances the licence discs related to operators whose licences were revoked (e.g Feathermore Logistics Limited)
9. I also heard from the proposed Transport Manager Mr Hodgins who gave evidence in support of the application and outlined his experience in the industry and the approach he would take in relation to Mr Elsagood if the application was granted. He said that if he suspected anything untoward was happening he would leave and be honest with the Traffic Commissioner in his explanation of the reasons.

## **Findings and Decision**

10. In making my decision I have had particular regard to the case of Aspey Trucks Ltd [2010] UKUT 367 (AAC). In that case the applicant had a previous conviction for conspiracy to supply drugs resulting in an 11 year prison sentence. The sentence had been imposed 12 years before the application was made and there were other relevant circumstances including a conviction for driving with excess alcohol which led to the applicant driving whilst disqualified when committing the drugs offence.
11. The Upper Tribunal stated that the approach that should be taken when considering repute on application is as follows:

*"In a case such as this, the Deputy Traffic Commissioner was not looking at putting someone out of business. Rather, he was deciding whether or not to give his official seal of approval to a person seeking to join an industry where those licensed to operate on a Standard National or Standard International basis must, by virtue of S.13(3), prove upon entry to it that they are of good repute. In this respect, Traffic Commissioners are the gatekeepers to the industry - and the public, other operators, and customers and competitors alike, all expect that those permitted to join the industry will not blemish or undermine its good name, or abuse the*

*privileges that it bestows. What does "Repute" mean if it does not refer to the reasonable opinions of other properly interested right-thinking people, be they members of the public or law-abiding participants in the industry?"*

12. With this guidance in mind I clearly have a discretion and need to conduct a balancing exercise between positive and negative factors to decide whether Mr Elsagood has proved on the balance of probabilities that he is of good repute.
13. On the positive side Mr Elsagood has neither been convicted of any offence since release from prison in 2009 nor has he been recalled whilst on licence from the custodial sentence. I have also noted the documentation that was submitted with the application to demonstrate the intention to operate in a compliant manner. I also record that Mr Hodgins presented as a mature and reputable individual whom I believe would act in the way he set out if appointed.
14. The most compounding feature on the negative side of the balance sheet is the previous conviction from 2003 for conspiracy to supply drugs. This resulted in a 14 year prison sentence and whilst much was made of the fact that Mr Elsagood was released from prison in 2009 I remind myself that in fact the sentence was not concluded until 2017 as the remainder of the total term was served in the community. It was also the case that the offence involved the illegal use of a heavy goods vehicle specially adapted to carry the drugs and it appears that at the time Mr Elsagood had either been granted an interim licence or was operating before the licence came into effect – either scenario has negative connotations. The conviction from 1991 is now spent and I attach little weight to it but it nevertheless shows an earlier propensity for dishonesty and once again involved the use of a goods vehicle. I also attach very little weight in the balance to the bankruptcy from 1999 other than to note that it happened.
15. Deciding the relevance of Mr Elsagood's involvement with "MPS Enterprises" on his repute presents a difficulty in that I did not hear the previous cases and can only rely on the transcript of the evidence and the written decision of the Traffic Commissioner together with the evidence Mr Elsagood gave to me. However even with those limitations it is possible to draw some conclusions. It is apparent from the evidence that Mr Elsagood was instrumental in setting up the initial discussion which led to the "sub-contracting" arrangement. There was conflicting evidence as to how knowledgeable or involved Mr Elsagood was but the Commissioner in her written decision said that she "placed limited weight on his evidence." Within the context of that finding in the written decision I take that to mean that she doubted the veracity of what he had said in evidence because she goes on to say that "he has his own agenda for saying what he did". I also note from the transcript that the Commissioner asked Mr Elsagood on a number of occasions whether, when he was a driver for MPS Enterprises,



he took note of the names on the licence discs displayed on vehicles. His answers to those questions were not consistent in that he said he had done so at one time when MPS discs were shown but had not done later when the discs belonged to other companies. My conclusion in relation to this aspect of the case is to find that Mr Elsagood's involvement with MPS Enterprises is an additional negative feature in the balance. The fact that the Traffic Commissioner believed his evidence lacked veracity, the fact that he had not made the necessary checks as to validity of licence discs as a driver and the apparent lack of enquiry by him as to the legitimacy of the arrangements he was promoting to customers all count against him particularly, when he had been the holder of an operator's licence previously and, it appears, was intending to make a further application in due course.

16. Taking all these factors, both negative and positive, into account I am not satisfied that the applicant company has the repute required under Section 13A(2) (b) and Schedule 3 the Goods Vehicles (Licensing of Operators) Act 1995 as a result of the negative matters detailed above in relation to director Peter Elsagood and refuse this application accordingly.



**John Baker**  
**Deputy Traffic Commissioner**

**25 October 2018**