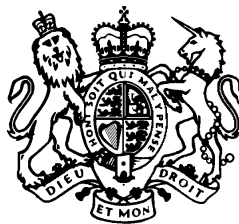


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**WRITTEN DECISION
OF THE TRAFFIC COMMISSIONER
FOR THE NORTH WEST OF ENGLAND**

**VIKINGCOACHES.com LTD
PC0004779**

&

**COACH AND BUS SERVICES LTD (sic) LEICESTER LTD
PF1133544**

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

Public Inquiry at Golborne
on 25 June 2018

Decision

Vikingcoaches.com Ltd

On findings in accordance with section 17 (3) (aa) of the Act this licence, I record a further formal, but now final warning.

I require the operator to enter into an undertaking:

That it will by 10 November 2018, at the latest, appoint a suitably experienced additional transport manager on the basis that such post holder will attend the business on at least one full day per fortnight to carry out duties alongside Adam Garratt. The operator will confirm such appointment by submission of an appropriate TM1 form and the provision to my office a contract of employment, or a contract of the services detailing the responsibilities that person has taken on.

Coach and Bus Services Ltd Leicester Ltd

On findings in accordance with section 14ZA (2) regarding financial standing and section 17(3) (aa) and (e) of the Act, this operator's licence is revoked with effect from 23.59 hours on 24 September 2018.

Adam Garratt – Transport Manager

I conclude *that his repute is seriously tarnished but not lost.*

Background

1. Vikingcoaches.com Ltd (hereafter Viking) (PC0004779) is the holder of a standard international public service vehicle operator's licence authorising the use of 21 vehicles. The licence was granted in 1998.
2. Coach and Bus Services Ltd Leicester Ltd (hereafter Coach and Bus) (PF1133544) is the holder of a standard national public service vehicle operator's licence authorising the use of 12 vehicles. The licence was granted on 22 December 2014.

History

3. Viking has been subject to previous regulatory hearings including Public Inquiries, as follows:
 - 28 October 2013 - an order was made for the effective curtailment of the operator's licence from 30 vehicles to 24 vehicles at Public Inquiry;
 - 23 June 2016 - A warning was issued at Public Inquiry against the operator on findings in accordance with Section 17(3)(aa) and Section 17(3) (c) of the Act and an undertaking was required to be entered into for the provision of an independent audit of compliance with the licence;
 - 17 March 2017 - A voluntary curtailment of the licence from 24 vehicles to 21 vehicles in circumstances where financial standing could not be satisfied for the former figure;
 - 2 June 2017 – The recording of a warning together with undertakings relating to financial standing following a Preliminary Hearing.
4. Coach and Bus has not had previously been called to Public Inquiry.

The Calling-in to Public Inquiry of the companies

5. These linked operators have come before me at a Public Inquiry in the light of reports of unsatisfactory outcomes of DVSA maintenance investigations. The businesses are in the control of a father and his sons, that is Paul with Adam and James Garratt. Adam Garratt is Transport Manager (TM) for both concerns.
6. The licence for a third business, Bryan Arthur Garratt and Partners trading as Abbey Travel (PC 1060975) was called to the conjoined Public Inquiry but the licence was terminated on 8 June 2018.
7. The Viking licence had been the subject of a voluntary reduction down to 21 vehicles following a Preliminary Hearing before me in June 2017. That hearing was concerned with an inability of the operator to evidence financial standing for what had been a 24-vehicle licence.
8. The Coach and Bus licence is held in the East of England but the hearings were conjoined because of the common features of the matters raised.

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9. Having heard evidence from Paul Garratt and from Adam Garratt in particular, I reserved my decision and indicated that I would issue the same in writing, with initial consideration awaiting the provision of the further financial confirmation and evidence of standing for Coach and Bus, for which I had allowed an additional 14 days. Completion of this decision has unfortunately breached my commitment that it be issued within 28 days (after the initial 14 days had elapsed), for which I offer my apologies. As it happens this has allowed for some further clarification of the position about the financial standing of Coach and Bus.
10. The circumstances bringing the operators to the hearing are not the subject of material dispute (except where stated) and therefore may be conveniently set out here. I therefore set out the matters in issue and then my findings in the sections below, as they relate, first to Viking and thereafter as to Coach and Bus.

Matters in issue concerning Vikingcoaches.com Ltd

11. In respect of Viking, Vehicle Examiner (VE) Howard had recorded an adverse outcome during a maintenance. He raised concerns about:
- The TM's lack of access to records,
 - The issue of 4 prohibitions to 4 different vehicles during the investigation,
 - In-house maintenance staff and their suitability to manage an ageing fleet,
 - The absence of measured brake testing in accordance with the Guide to Maintaining Roadworthiness, and
 - Inadequacies in wheel re-torque policies and arrangements.
12. The VE had visited the operator in spring 2017. In what appeared to be a comprehensive response to his findings, albeit in an undated letter, Adam Garratt provided assurances for the future operation of the licence. (Page 141 – 143 of the brief). It included the following passages, where it was explained by Adam Garratt that:
- *“Rolling road brake tests (RBT) are carried out in advance of all MOT tests and these are recorded and held on file, I now understand the RBTs should be carried out 4 times per year, once on MOT and 3 other which will now be added to the forward maintenance planner, further to this every PMI all our vehicles will have an in-house recorded decent to brake test, this will be attached to the PMI sheet and I will check this during my signing off process”* [..].
 - *“Gate checks - going forward I will be conducting random checks no less than 1 driver per week will be checked as he attempts to leave the site. Or take the driver round the vehicle and will check the quality of his initial check on documents completed, I will then record of this defect to note and it will be held in the vehicle file for future reference. I trust this is a check that would meet your approval.”*
 - *“By way of demonstrating Viking coaches.com Ltd are taking our operator's licence undertaking and total compliance seriously, I've contacted a highly experienced external transport consultancy firm (OLMC transport consultants), who will be attending site and carrying out independent vehicle*

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inspections, these will be timed to be after the workshop have carried out other maintenance inspections but before the vehicle returns to the road. Should, at the independent inspection defects be found then, I will offer at that time to reduce the maintenance inspection frequency from 5 to 4 weeks, but I shall await independent reports.”

- *Further, the external consultancy will also be carrying out a vehicle records compliance audit quarterly, where (for) 10% of the vehicles in use, maintenance records will be inspected and checked for compliance. Should any action points flow from the compliance audit, a full action plan to address matters will be drawn up and carried out. The compliance audit, the findings and any corrective action plan will be fully documented and held on file for 2 years and made available to DVSA and the Office of the Traffic Commissioner on request. Again, I hope this is a comprehensive measure that you will approve of.”*

13. During the hearing, I had asked the operator about the extent to which it had met the assurances made in its undated response to DVSA, believed to have been sent in by him in late May or June 2017. My consideration was undertaken in the context of subsequent events including the provision of a “satisfactory” maintenance inspection outcome recorded by VE Foulds, following his visit in January 2018. However, it also took account of the further prohibitions that had been accrued since VE Howard’s visit. These totalled 5 additional matters including 4 in the early months of 2018.

14. The operator, through Paul Garratt, who gave the principal evidence, questioned the validity of each of the prohibitions issued by VE Howard during that inspection. He argued that:

- Two of the vehicles were awaiting repairs and in fact might have been listed as ‘vehicle off road’ (VOR),
- Another had suffered accident damage and was taken out on the road that day in error, and,
- A fourth had been re-presented for successful clearance of the prohibition by the operator, without any work being carried out on to the supposedly worn suspension bush.

15. Both witnesses were asked about the assurances contained in the response letter.

- Audits were intended to be provided by quarterly through OLMC, but it was accepted that they audits had not been completed *since* September 2017 (a copy of which was in the brief);
- When pressed, no cogent explanation could be offered for not carrying out the independent maintenance inspections after each in-house inspection which were also promised;
- I was further told that whilst the contractor, Carl Myers of OLMC, had helped produce the response letter containing the assurances, he had subsequently advised the company that the steps promised were unnecessary;
- The operator accepted that it had not notified my office that the assurances originally made were no longer intended to be met by it.

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16. The repute of Adam Garratt as author of the letter and the transport manager was brought into question.
17. In his evidence Adam Garratt had sought to emphasise that he was playing for a full part to his role and believed that he was complying with the undertakings he had given for his role. He struggled to explain the circumstances in which he had chosen not to carry through the promises and assurances given in his letter to VE Howard. He described Carl Myers at OLMC as having given him the “wrong information”.

Findings in respect of Viking:

18. To the extent that formal findings are necessary in this case on matters the subject of dispute, I found:
- That the operator did incur the prohibitions described in the brief. Whilst I noted the challenges raised by Paul Garratt to the subsequent prohibitions issued (referred to in paragraph 11 above), if any formal complaint was raised, it was unsuccessful.
 - I do not accept the objections raised, which serve only to emphasise that the first three prohibitions were wholly capable of being avoided, if the operator had exercised proper care and attention. The fourth exposes what first sight might be regarded as a cavalier or risk-taking attitude to compliance, whereby a further prohibition during an MOT test was potential outcome of carrying out no rectification work before a re-submission for re-test.
19. In relation to matters that were not the subject of dispute, I found the following positives:
- i. Financial standing is satisfied, albeit that the bank statements showed on a number of dates monies passing between the accounts of Viking, on the one hand, and Coach and Bus on the other;
 - ii. According to the compliance audit of OLMC dated 11 September 2017, the operator was said to be working “relentlessly” towards compliance and that it was “complimented”. A RAG status report provided ‘Green’ entries, except three ‘Amber’ matters. Such analysis is consistent with the current OCRS assessment of the operator as Amber/Amber, albeit that the audit does not reflect the 5 prohibitions since it was prepared, 3 of which post-date VE Foulds’ satisfactory investigation outcome;
 - iii. Inspection of preventative maintenance records showed timely inspections consistent with VE Foulds’ findings in January 2018;
 - iv. RBTs were being obtained in accordance with the assurances given.
20. I also found these negatives:
- i. Prohibition rates for the operator over 2 years and 5 years stand at 42% and 35% respectively, when the national average is 16% and 17%;
 - ii. The absence of an effective VOR system;
 - iii. The readiness of the operator to continue to blame drivers for non-compliance: they were described as “evasive” during the hearing. This position betrayed a lack of appreciation that it is for the operator to manage its drivers;

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- iv. Whilst recorded gate checks of the drivers daily walk-round regime had been undertaken from a “couple of months ago”, before then had been carried out only “informally”. Such checks were not therefore in accordance with the assurances given;
- v. The assurance to be provided by quarterly third party audits was not met and notification of change to the promise made had been communicated;
- vi. The assurance that independent third party vehicle inspections would be conducted in respect of 10% of the fleet had been entirely discarded as a promise, again without any notice being given.

Matters in issue concerning Coach and Bus:

21. In respect of Coach and Bus, the calling-in letter referred in particular to the notice of shortcomings issued following an unsatisfactory maintenance inspection undertaken by VE Robinson in November 2017. It was alleged that the undertakings to keep vehicles in fit and serviceable condition had been breached and that there had been material change, significantly in relation to the operator’s financial standing.
22. The principal maintenance issues raised concerned the absence of brake testing at least four times per annum by means of an RBT, failure to complete records fully and concerns about whether the TM was fully carrying out his responsibilities. Keith Cooper had resigned from that position but was said to be carrying out the role ‘informally’ at the time of VE Robinson’s visit. His visit had been prompted by the issue of an immediate “S” marked prohibition on 12 July 2017 in respect of a serious fuel leak. During the hearing, it was offered that the prohibition had been issued when it had become clear that the failure of a previous repair to the vehicle, undertaken before its purchase, had become apparent. An unsuccessful challenge to the prohibition had been made on the basis that the vehicle would not have been sent out if the true nature of the fault had been known.
23. The repute of Adam Garratt as transport manager was brought into question.
24. Financial standing for a fleet of 12 vehicles is evidenced by the availability of £56,350. When the calculation was completed by my staff on 22 June 2018, an average of only £ **REDACTED** was found, insufficient even for a single vehicle. The closing balance was worse at only £ **REDACTED**.
25. In a private session at the end of the hearing, **REDACTED**. I was persuaded to exercise my discretion to allow a period of grace of 14 days for the position to be evidenced by the injection of £ **REDACTED** to be proved by the operator, rather than immediately to revoke the licence. **REDACTED**.
26. Since the conclusion of the hearing however:
 - Much to my surprise and disappointment, I received no further information *from the operator* within the 14-day period after 25 June 2018, which ended on 9 July 2018;
 - On 19 July 2018 however, Diane Sanders, company secretary of Coach and Bus, provided a bank statement, although it only covered only 3 days, that is 16 to 18 July 2018, it showed a balance of £ **REDACTED**. This total though was substantially reliant upon a transfer of £ **REDACTED** from Viking. There was no

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evidence of any deposit of the sort envisaged at the hearing leading to the period of grace allowed. There were no payments in from **REDACTED** but a **REDACTED** repayment of what was recorded on the statement as a loan repayment to **REDACTED** was dated 16 July 2018. No separate account had been set up as had been offered;

- On 23 July 2018, an email was received from **REDACTED**, which drew to my attention the *withdrawal of an offer* he understood to have been made to support the licence with the provision of £ **REDACTED**. Enclosed with the email was an extract from Coach and Bus' bank statements, which disclosed a list of *repayments to him* of loans over the period February to July 2018. In the period since the oral hearing, £ **REDACTED** had been repaid from the Coach and Bus bank account to **REDACTED**. It was stated by **REDACTED** that £ **REDACTED** had been provided to keep the account in at a level meeting the financial standing requirement but in each case that the monies had been repaid;
- On 24 July 2018, an offer of assistance by **REDACTED** in respect of Adam Garratt as the TM, made in an undated letter was rescinded.

27. In his evidence Adam Garratt maintained that he was offering the fullest hours possible to his role as TM for both operators, although he described his time at the Melton Mowbray Operating Centre (that for Coach and Bus) as being principally on a Saturday morning and one other day only. He had been in the role of for that operator for a period of 6 months and had come to terms with it. It was pointed out that a plan for Jessica Garratt to be trained to share in a formal sense transport manager responsibilities was in place: she was said already to be helping in the role.

Findings in respect of Coach and Bus:

28. The operator has failed to satisfy the undertaking embodied in the decision that I made within the Public Inquiry to allow time for financial standing to be met. No proper explanation has been offered by the operator, although the further email traffic from **REDACTED** withdrawing financial support on which the business is apparently reliant, provides a deeper understanding for that state of affairs.
29. I find that in reality the ability to meet financial standing at both Viking and at Coach and Bus is predicated on the recycling of monies between the two businesses. Both the principles of fair competition in the sector and the need for me to be satisfied that both are capable of showing that there are the necessary funds in place that support the assurance that only fit and serviceable vehicles will be deployed to the road, are engaged here.
30. This is a company where there have been long-term issues in terms of satisfying financial standing including my office having to resort to issuing PTR (Propose to Revoke) letters to the company.
31. The apparent failure of the directors to appreciate the predicament it is facing is alarming. I can only assume that they are resigned to their fate, aware as they are that a lack of financial standing is a mandatory ground for the revocation of the licence.
32. The extent of unsatisfactory findings by VE Robinson for Coach and Bus were narrower in range than in respect of Viking. The inspection of vehicles by him did not lead to the issue of any prohibitions. It is the case however that the operator's current

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OCRS assessment is Red/Red with a significantly poor prohibition rate over 2 years and 5 years standing at 33% and 43% respectively, against a national average of 16% and 17%.

Consideration and decisions

33. It was submitted in respect of both companies that there were longstanding family business upon which a number of long-term staff relied.

Consideration and decisions regarding Viking:

34. Submissions made in respect of Viking referred to a company with 25 members of staff including 18 drivers engaged in school contract provision, swimming pool services, with some private hire work. I was told that there were 27 vehicles in possession with 21 authorised but that at least until the school term ended, the full capacity was in use.

35. It was contended that the recent satisfactory assessment by VE Foulds for Viking pointed to the company moving in the right direction.

36. I make findings in accordance with section 17 (3) (aa) of the Act.

37. A failure to honour assurances concerned with future compliance, after adverse maintenance investigations, brings in to sharp focus the level of trust and confidence that may be had in an operator. Both the DVSA and Traffic Commissioners are entitled to rely on indications given, as was the case when Adam Garratt gave the assurances that he did. Where such assurances are provided in conjunction with professional advice, as here in the case of OLMC, they may indeed carry additional weight. Even more disappointing therefore, when the operator does not ensure that what is offered is carried through into action. In this case the promised "independent vehicle inspections" by OLMC were never carried out. It followed that promised reduction in maintenance frequencies from 5 weeks to 4 weeks, which would be considered after receipt of such reports, never fell to be considered. The offered quarterly audits of 10% of vehicle maintenance records to be inspected for compliance did not occur as described. Annual reports were provided (in 2018 and 2017) not quarterly ones. If these steps had been taken, the prospect is that further prohibitions might have been avoided.

38. The operator's repute falls to be considered in the light of my findings. I ask myself at this stage the so-called Priority Freight question as to whether I am satisfied that this operator will be compliant in the future. The answer is a finely balanced one, which takes into account the decision I make below in respect of the licence of Coach and Bus, the relevance of which is that the outcome of that decision would be to narrow the focus of the immediate Garratt family in respect of PSV operations to a single business. It seems to be the case that financial standing for a single business is also more likely to be capable of satisfaction without reliance upon now retired family members. Their readiness to support business financially on a consistent and sustainable basis is otherwise in serious doubt. Some positive changes have very belatedly been made in practices which ought to be capable of supporting the compliant operation of vehicles for a much reduced overall fleet. The assessment of VE Foulds provides some level of comfort that matters are more likely than not to be on an even keel. Trust and confidence in this business has however been seriously undermined and it will be

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necessary for attitudes within the business to change if this licence is to survive in the long term. The operator must urgently put in place systems, to monitor and quality assure the fitness and serviceability of vehicles used in the business. I am not satisfied that taking into account the history of this operator, that I can be assured that the sort of failures that have led this operator once again to Public Inquiry will not be repeated in the future, in a scenario where most of the key characters in the business would remain as before. It is in those circumstances that I require the operator to enter into an arrangement with (ideally) an external TM to provide some necessary oversight and challenge in this business.

39. This licence has already been subject to significant curtailment in recent times. In the circumstances, having considered regulatory action against it, I judge that suspension of the licence, or yet further curtailment of it would have disproportionate impact on operations. I record instead a further formal, but now final warning.
40. I shall require the operator to enter into an undertaking, at the latest by 10 November 2018, to appoint a suitably experienced transport manager on the basis that such post holder will attend the business on at least one full day per fortnight to carry out duties alongside Adam Garratt. The operator will confirm such appointment by submission of an appropriate TM1 form and the provision to my office a contract of employment, or a contract of the services detailing the responsibilities that person has taken on.

Consideration and decisions regarding Coach and Bus:

41. Coach and Bus undertake school contracts, swimming provision with a small amount of private hire work. I was told that there were 16 vehicles in possession but whilst the school term continued, the whole entitlement was in use.
42. It was argued that for Coach and Bus that as an operator it never intended to create danger by the deployment of its vehicles, although it somewhat oddly (in my view) accepted that its running of that business was more akin to “a hobby or addiction”. This explanation of the way in which this business is run, is reflected in the evidence that I have heard. For example, my finding that it is inadequately funded to support its purposes. Further, that Adam Garratt in describing the way he carries out his transport manager responsibilities, initially referred to meeting them on a Saturday morning and that only recently has a decision being made for Jessica Garrett to study herself so that she might be appointed as a transport manager alongside him.
43. Financial standing not having been met and it being considered inappropriate that the operator be allowed further time to meet this requirement, for reasons previously given; revocation of the licence is required by the Act. It is appropriate though that a period be provided during which an orderly closedown of the business may be achieved, and to enable any local authority with contracts delivered by this operator to make fresh arrangements for them to be met.
44. On findings in accordance with section 14ZA (2) regarding financial standing and section 17(3) (aa) and (e) of the Act, this operator’s licence is revoked with effect from 23.59 hours on 24 September 2018.

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Consideration and decisions concerning Adam Garratt as transport manager:

45. Having listened with care to the evidence of Adam Garratt, I had the strong impression that he had little understanding of the seriousness of his failure to do what had been promised in the letter of response to VE Howard. It appeared to me that the giving of promises might have been no more than a convenient method way avoiding the issue. I was unimpressed by the passing of blame to the transport consultant, who was not present at the hearing, when he had signed the letter to DVSA.
46. I also concluded that the amount of time admitted to have been assigned by him to the Coach and Bus licence was inadequate and disproportionate, relative to that given to Viking. Coach and Bus may have been a licence with a smaller authority (12 vehicles) as opposed to Viking (with 21 vehicles) but there was a clear need, for greater assistance in the management of a fleet of some age.
47. His reputation has been very much in issue during this case. I do not consider that there could be realistic complaint raised if his reputation was forfeit in the light of my findings. My trust in him has been seriously tested. On balance however, I judge that such a step would be likely to be disproportionate. His shortcomings whilst serious are borne of naivety and over expectation of him by others. I conclude that he would be assisted by the presence of another experienced TM, as described by me in paragraph 40 above. A single licence would place him in a more manageable business. On that basis by a narrow margin, I conclude that his reputation is seriously tarnished but not lost at this time.



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