



TRAFFIC COMMISSIONER FOR SCOTLAND

GOODS VEHICLES (LICENSING OF OPERATORS) ACT 1995

JAMES STRATHEARN – OM1103110

JOHN STRATHEARN – TRANSPORT MANAGER

PUBLIC INQUIRY HELD AT EDINBURGH ON 25 OCTOBER 2018

DECISION OF THE TRAFFIC COMMISSIONER

Background

1. James Strathearn (born 1985) of 10 Dumyat Drive, Falkirk, FK1 5PD has held a standard national goods vehicle operator licence since 20 June 2011. He trades as J S Haulage. The authorisation was for 4 vehicles and 4 trailers operating from Innovate, 2 Boyd Street, Falkirk, FK2 7BL. The transport manager from time of grant of licence was Mr John Strathearn (born 1955) of 29 Glenbrae, Flakirk, FK1 5LL. He resigned on 1 July 2018 and was not replaced.
2. The operator made a variation application to the Central Licensing Office at Leeds (“Leeds”) to increase the authorisation from 4 to 7 vehicles and 4 to 10 trailers and to change operating centre to Abbotshaugh, Abbotshaugh Road, Falkirk, FK2 7XU. A Leeds caseworker granted an interim direction on 22 March 2017 increasing the authorisation to 7 vehicles and 10 trailers from the Abbotshaugh address.
3. DVSA were investigating this operator and ultimately my Edinburgh Office received adverse reports from DVSA Vehicle and Traffic Examiners. I directed that Mr James Strathearn and Transport Manager Mr John Strathearn be called to a Public Inquiry.

Transport Manager

4. Mr John Strathearn is the father of James Strathearn. On form TM1, dated and signed on 28 March 2011, Mr John Strathearn stated that he would work 8 hours on Wednesdays. He had no other permanent or regular employment. On 28 June 2018, Mr James Strathearn emailed Leeds notifying that John Strathearn will no longer be transport manager and requesting a period of grace. A period of grace to 31 October 2018 was granted. No one else has been nominated.

Vehicles

5. As at 17 September 2018, 4 vehicles were specified on the licence – SF17 ZDT, SJ67 XCX, SV14 OBK, CU08 EDR.

J S Haulage (Scotland Ltd

6. Companies House records show a company J S Haulage (Scotland) Ltd (SC543457) was incorporated on 23 August 2016 with Mr James Strathearn as sole director and sole shareholder. On 8 September 2018, Mr Strathearn applied for striking off.

Public Inquiry

7. The Public Inquiry was listed for Edinburgh on 25 October 2018 and the usual Public Inquiry call up letters and briefs were sent on 20 September 2018 to Messrs Strathearn. The Inquiry brief extended to 583 pages. On 21 September 2018, Leeds received a SUR1 form from Mr James Strathearn in which he applied to surrender the licence and stated that he had destroyed the licence and discs. He dated the form as 10 September 2018.
8. A Traffic Commissioner is not obliged to accept a surrender request from an operator especially one subject to investigation and call to Public Inquiry. I was in no doubt that it was in the public interest, in the interest of the purposes of the regulatory regime of road safety and fair competition, that the Public Inquiry proceed and that Messrs Strathearn attend. They were advised that the Public Inquiry would proceed on 25 October.
9. By email dated 24 October 2018, Mr T Docherty, Solicitor, Glasgow, advised that Mr James Strathearn had contacted Mr Docherty to say he would not be attending the Public Inquiry. Mr N Kelly, Solicitor, Glasgow, emailed on 24 October 2018 intimating that he had been instructed by Mr John Strathearn but was now instructed to intimate to my Office that Mr John Strathearn will not be in attendance. Mr Strathearn had been advised by Mr Kelly of the potential consequences of non-attendance nevertheless he will not be at the Public Inquiry.
10. In the event, there was no appearance here in Edinburgh on 25 October by either of Messrs Strathearn and no written representations or productions. Accordingly, I have had to consider and decide matters in their absence.

Consideration of the evidence

11. Given the extent of the DVSA evidence; that the Examiners' reports were supported by productions; that there was no evidence available to me from either operator or transport manager which could serve to challenge DVSA's findings, I accept the DVSA evidence. Their reports can be referred to for their terms. What follows is highly summarised and is what I have taken from the DVSA reports as material to my decisions.

Roadworthiness

12. The operator's vehicles and trailers have attracted 5 immediate roadworthiness prohibitions since June 2014, the latest to a trailer on 21 March 2018 being 'S' marked. In 2015, one of the operator's vehicles had a PRS fail at annual test, but since then the 4 vehicles presented passed first time.
13. A prohibition issued to a trailer on 21 March 2018 was for 5 brake related defects which were long standing and should have been detected and repaired – 'S' marking. This prompted a DVSA Vehicle Examiner maintenance investigation and issuing of the usual PG13G form to the operator. It transpired that this trailer had been inspected by Imperial Commercials, including as recently as 4 days before the prohibition. Mr Strathearn discussed this in detail with the Examiner and produced relevant safety inspection and invoicing paperwork. The Examiner's considered opinion was that there was a significant

failure in maintenance which could be attributed to Imperial Commercial as maintenance provider and not to Mr Strathearn's systems.

Traffic Examiner evidence

14. DVSA's investigations were lengthy and revealed serious drivers' hours offences, including driving without a card and use of drivers' cards belonging to Gail McKenna and Bryan McKenna (mother and son).
15. Bryan McKenna drove for Strathearn in 2016. His original digital driver card was issued in 2015 (ended 300) and reported lost by him in April 2016. He was not sure where he lost it, maybe left it in a vehicle, but never saw card 300 again. His new card from 28 April 2016 ended in 310. On 8 August 2016, Bryan McKenna started work with Asda Stores Ltd. Their downloading of his new 310 card showed that from 12 May 2016 the new 310 card had been used in Strathearn vehicles until 29 July 2016, his last shift with Strathearn. After that, the new card 310 was used on Asda vehicles.
16. DVSA established that old lost card 300 was used regularly between 30/4/16 to 10/12/16 in Strathearn vehicles. DVSA requested data from Strathearn for the period 1/4/16 to 31/12/16 and a complex investigation followed including interviews with operator, transport manager and drivers.
17. On 114 occasions, lost card 300 was used on Strathearn vehicles. On 18 April 2018, James Strathearn was interviewed by DVSA Examiners. He schedules the drivers. Tachograph analysis was by Tachomaster. He and his transport manager father deal with the reports and any infringements. Drivers are self-employed, some (David Honeyman and Sam Gillolly) were paid in cash though that stopped when DVSA started investigating. The work is for DHL, Asda, Freshlink Bookers. Mr Strathearn admitted/asserted being the person who used the card on the 114 occasions. The Examiner's doubted if he was the sole user and believe he was covering up for some others who had used the card, there having been very speedy changeovers with other drivers. The use of the lost card allowed drivers to keep driving when they should have taken breaks. No other drivers interviewed admitted using the lost card.
18. A card in name of Gail McKenna was used during the period April – November 2016. She is Bryan McKenna's mother and did some driving for Strathearn. She was employed full time with Calor at Grangemouth. The Examiners were able to compare her time sheets with Calor, her digital card download data and interviewed her on 2 occasions. Initially, before the Examiner's cross-referred her digital data with the Calor timesheets, she said she might have done some of the weekday driving shown on the download. She drove for Strathearn without pay as a hobby, to get a shot of a truck. She would only leave her card with James Strathearn for downloading. By the second interview, she stated she did not do the driving on the dates of concern – 19, 20 and 21 April 2016. On weekday 21 April 2016, in one vehicle, 3 cards were used – her's (Gail McKenna), Bryan McKenna's lost card and James Strathearn's. The Examiner's assessment of Gail McKenna was that she did not do the mid-week driving and by her initial answers she obstructed the Examiner's attempt to find the truth.
19. Documentary evidence was required by the Examiners, including wage slips for drivers in period of October to December 2016. As their investigation developed, it became apparent that Mr Strathearn had produced false pay slips showing amounts paid to drivers which were inflated as if to show they worked greater hours than they did. An example is that the payslips produced in name of Bryan McKenna for period 7 October to 30 December 2016 showed he had been paid £500 net per week for very little driving – in contrast to the payments made to full time drivers. The Examiners established that Mr McKenna was working for Asda. When that was put to Mr McKenna he said he had not seen the payslips produced by Strathearn to the Examiners for October to December 2016 and had never been paid £500 per week. Mr Strathearn failed to provide evidence of the actual payments

of the £500 on the payslips. When this lack of authenticity of the payslips was put to Mr Strathearn at the interview on 18 April 2018, he admitted that he'd made them up. Similarly, payslips for a driver Andrew Lindsay, in the same period, for £500 per week, were false. There was an analogous inconsistency in respect of purported payslips to a driver Edward Hinde. False payslips, including a false NI number, were produced for a driver J Berry. Again, Mr Strathearn did not provide evidence to marry the amounts on the payslips with financial records of payment.

20. In course of their investigations, the Examiners considered what role was played by transport manager John Strathearn. James Strathearn, at interview, told the Examiners that this father worked 15 – 20 hours per week. In contrast, John Strathearn said that he didn't work every week but, if his son needed a hand, he'd help him. Given what the Examiners were uncovering about drivers' cards and driver's hours offending, they considered that these issues should have been found or prevented had the transport manager been undertaking his role. Either John Strathearn was not fulfilling the role or he was complicit with his son in the fabrication of drivers' hours.
21. James Strathearn did download data from vehicles and drivers' cards and passed that to his father. He sent the data to Tachomaster which provided infringement reports to John Strathearn – who passed them to his son. John Strathearn did not know who the drivers were or on what work they were scheduled. The Examiner's view was that John Strathearn was an in name only transport manager.
22. Analysis of individual drivers found weekly rest offending by Gail McKenna over 2 periods in May 2016 and June/July 2016
23. Driver Steven McQueen worked for Strathearn from June 2016. There were 20 occasions in the period analysed when journeys started by Mr McQueen continued with driving with no card (14 occasions) and 6 when Bryan McKenna's lost card was used. On these 20 occasions, the reason would be to continue the journey and make the delivery and to hide break offences. 17 break offences were identified from Mr McQueen. At interview, Mr McQueen denied driving without a card, but the Examiners believed otherwise especially given that he said that he had never changed driving with James Strathearn in the evening (inconsistent with Mr Strathearn's claim that he, Strathearn, was responsible for use of Bryan McKenna's card). The Examiners concluded that there were 20 false records, 17 of not taking the required break(s) and 2 of exceeding daily driving (details given).
24. As noted above, at interview, James Strathearn claimed that it was he who used the lost Bryan McKenna card on 114 occasions. If that were the case, then the Traffic Examiner would attribute to him 8 weekly rest offences and 57 insufficient daily rest offences. There were 9 occasions when the Traffic Examiner placed James Strathearn as the person who used Bryan McKenna's card.
25. Drivers interviewed by the Traffic Examiner were asked if their cards were downloaded. There was downloading of cards by Messrs Strathearn e.g. Mr Steven McQueen's interview "James downloaded it his dad downloaded it pretty much every week". Mr McQueen said 3 break infringements were brought to him by James Strathearn and he signed for them.
26. Semi-retired casual driver, David Honeyman, who had worked for Strathearn for 5 years at interview said his driver card was downloaded every 4 weeks by James Strathearn. Driver Honeyman worked for Strathearn in 2016, paid by cash, and doing journeys south. There were 10 journeys in the period of concern in 2016 when there was driving without a card or using the lost Bryan McKenna card. Of these 10 false records, there were 7 break offences and 4 in excess of daily driving limit. Mr Honeyman was asked about a very quick handover between his card and the lost Bryan McKenna card on 4 September 2016. He recalled a night (not specifically that night) when he did a very quick changeover with a driver who was a stranger. He did not think 32 seconds was too quick. He denied using any other driver's card. He had no idea why on 10 September 2016 there was driving

without a card immediately after him driving 8 hours 25. He could not remember. He was asked if he removed his card to hide that he'd driven for 11 hours. It was also put to him that he drove on without a card. He could not explain. He accepted that he had committed breaks, rest offences and false records. Throughout he denied using anyone else's card.

27. Lawrence Gemmell worked for Strathearn from about 25 October 2016, paid by salary, doing fridge work. He denied ever being given another driver's card to use. He was asked about very fast changeovers between his card and the lost Bryan McKenna card and said it was nothing to do with him. He did not need to run on anyone else's card.
28. Edward Hinde worked for Strathearn from October 2016. He was paid a salary to the bank £500 per week and had checked with HMRC that these were wages with NI paid. He had not used anyone else's card. His card was downloaded every month or more. Mr Strathearn's dad would give him a letter of infringements but Mr Hinde would have given a print out. Strathearn had asked him to do a run for a Mackie and that had put his daily rest out on 20 November 2016; it was a mistake. He denied removing his card on 25 November 2016. He said that he'd run out of time and someone else had jumped in. Changing cards only takes seconds. The Examiners found 2 occasions when Bryan McKenna's card was used prior to Mr Hinde driving. There were 3 false records and 3 daily rest offences. At interview. Mr Hinde denied using Mr McKenna's card.
29. The Examiner interviewed John Strathearn about his involvement with the company. His main role is to download the drivers' cards and vehicle units and send them to Tachomaster. If an infringement is detected he would tell his son who would speak to the driver. He'd check driver licences every 6 months. He was not involved with what work the drivers and vehicles were doing nor with scheduling. He did not check to see if drivers had other employment. He'd do some occasional driving to help out. He had not used anyone else's card.

My decisions

30. I have had regard to the Senior Traffic Commissioner's Guidance Document and, in particular, Nos. 1, 3 and 10 and to the undernoted case law:

Bryan Haulage (No.2) T2002/217 (must I put this operator out of business);
Priority Freight T2009/225 (can I trust this operator in future);
Thomas Muir (1999 SLT666) decision of the Court of Session (integrity of regulatory regime);
Martin Joseph Formby T/2012/34 (trust);
Aspey Trucks T2010/49 (the compliant industry);
C G Cargo and Sukhwinder Singh Sandhu T2014/41 (disqualification);
Arnold Transport & Sons Ltd v DOENI NT/2013/82 (fair competition);
Alacline Ltd TT 8/2000 (must I accept withdrawal/surrender).

31. In respect of this licence there is some positive evidence in relation to vehicle and trailer roadworthiness. I do not know if there has been continuing financial standing as no up-to-date evidence has been produced. It is patently obvious from his interview evidence and the results of the Traffic Examiner investigation that transport manager, John Strathearn, close family to the operator, has not been exercising the continuous and effective management of the transport operation as is required by the regulations EC1071/2009 – the duties of a transport manager are reflected in the Senior Traffic Commissioner Statutory Document No.3. He did play a role in relation to downloading of vehicle unit and driver cards and sending the data to Tachomaster for analysis, however, whilst some drivers were getting infringement reports (I find this evidence in the driver interviews in the brief) extremely serious offending was happening on his watch. The downloading and the use of Tachomaster and cursory engagement in passing on infringements was nothing but a veil over what was going on: derisory behaviour on his part. Had he been performing as a

transport manager of repute, he would have known who was driving, have spotted driving off the card, been curious about handovers and managing compliance. By omission, neglect and disinterest, he allowed the serious offending discovered by DVSA to happen. He did not come to the Public Inquiry so I only have his interview answers as clue to his attitudes and abilities. His answers do not inspire confidence. He is not someone I could trust with any other operator licence. It is proportionate that I remove his repute and that I disqualify him. I think it is most unlikely that he could ever contribute positively to the compliant operating standards required of modern road safety and fair competition. The disqualification will be for life. It is open to a person to apply to the Traffic Commissioner for the removal of the disqualification. Should Mr John Strathearn ever contemplate such, then he will have to contemplate showing evidence of rehabilitation such as passing the transport manager CPC afresh.

32. I now turn to operator James Strathearn. I am disadvantaged by his absence from the Public Inquiry. However, his proffering to Leeds of the SUR1 form requesting surrender makes this a case in which I do not have to pose the Bryan Haulage question for Mr Strathearn has asked to be put out of operating under this licence.
33. Mr Strathearn is a man who has lost whatever repute he might ever have had. He has engaged in dangerous, dishonest and deliberate undermining of the drivers' hours and tachograph rules which exist as anchors of road safety. He has colluded with others to make false records and he produced falsified documentation to the DVSA Examiners. I am in little doubt that drivers knew what he was up to to some degree. His was a collusion. In an 'honour amongst thieves' approach he took the blame for all 118 instances. An operator cannot survive such conduct and there is nothing in this case which could possibly allow me to trust Mr Strathearn in future or hold back from revocation. He has breached the licence undertakings; he has breached the relationship of trust; he has offended against road safety and fair competition.
34. I revoke this licence on grounds of loss of repute, loss of professional competence, material change and breach of the licence undertakings. The revocation is immediate.
35. I now turn to my powers of disqualification and to the guidance thereanent in the Statutory Document No. 10 Annex 3 and in the case law notably *C G Cargo and Sukhwinder Singh Sandhu T2014/41*. This is a severe case, of that there is no doubt with the operator at the very heart of and instigator of what was rotten. There was some allusion in his and his father's interviews to relationship breakdown and depression but, absent any evidence, I have little in way of mitigation or positives to factor into my considerations. The period of disqualification will be 5 years with immediate effect, as any lesser period will not mark the seriousness. The ending of a period of disqualification does not mean that he will ever be granted an operator licence again (in whatever capacity) for the restoration of repute is not automatic and the onus will be on him.

Decision

36. The operator licence held by James Strathearn is revoked with immediate effect on grounds of loss of repute, loss of professional competence, material change, breach of the licence undertakings, false declaration – sections 26 and 27 of the 1995 Act apply.
37. James Strathearn is disqualified for FIVE YEARS with immediate effect from applying or holding an operator's licence in this or any other traffic area in terms of section 28(1) and 28(4) of the 1995 Act will apply, that is if the disqualified person:
 - (a) is a director of, or holds a controlling interest in-
 - (i) a company which holds a licence of the kind to which the order in question applies, or

(ii) a company of which such a company is a subsidiary, or

(b) operates any goods vehicles in partnership with a person who holds such a licence, that licence of that company, or, as the case may be, of that person, shall be liable to revocation, suspension or curtailment under section 26.

38. Mr John Strathearn is no longer of repute as a transport manager and I disqualify him for life with immediate effect in terms of Schedule 3 of the 1995 Act.

Joan N Aitken
Traffic Commissioner for Scotland
Edinburgh

31 October 2018