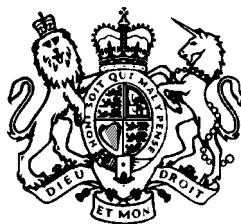


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DECISION OF THE TRAFFIC COMMISSIONER FOR THE NORTH WEST OF ENGLAND

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

DAVID ALAN HESKETH
trading as **HESKETH TRANSPORT SERVICES**
OC0283308

Public Inquiry at Golborne
on 10 December 2018

Decision

On findings made in accordance with Section 26 (1) (b), (c) (iii), (e), (f) and (h), and Section 27 (1) (a) of the Act in respect of good repute, financial standing and professional competence, I direct revocation of this licence which will take effect from 23:45 hours on 11th January 2019.

I find the repute of Julie Hesketh as a Transport Manager to be lost and disqualify her indefinitely from holding such a role in the future. Rehabilitation measures are inappropriate in this case.

I make no adverse finding in respect of Steven Begley.

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Background

1. **David Alan Hesketh** trading as Hesketh Transport Services (**OC0283308**) is the holder of a Standard National Goods Vehicle operator's licence for 3 vehicles and 2 trailers that was originally granted on 9 November 1993. A sole trader, David Hesketh's wife, Julie Hesketh, is the nominated Transport Manager (TM). An application made on 4 September 2018 is before me for Steven Begley to succeed her.
2. The operator previously came to a Public Inquiry in October 2008 when his licence was substantially curtailed from 8 vehicles and 6 trailers down to its current level. Three undertakings were then attached as follows:
 - i. That the authorised vehicles will be given rolling road brake tests quarterly and records kept;
 - ii. That the maintenance arrangements will be independently audited biannually and records kept;
 - iii. That the authorised vehicles will be given planned maintenance inspections every few (sic) weeks.
3. This calling-in to Public Inquiry is the result of a vehicle encounter on 2 October 2017, where drivers' hours infringements were detected and delayed prohibitions were issued for a loose wheel nut and the discovery that an AdBlue cheat device was fitted to one of the operator's vehicles. The latter delayed prohibition was "S" marked indicating a significant failure in maintenance systems. Investigations by way of a follow-up of what had happened were carried out by Traffic Examiner (TE) Batten in October 2017; he recorded an unsatisfactory Traffic Examiner's Operator Report (TEOR) outcome, and by Vehicle Examiner (VE) Wilson in July 2018, whose maintenance enquiries led to a similar outcome.
4. The operator was placed on notice that there were concerns also about whether his TM was carrying out her role, and therefore that professional competence was maintained, whether reputation was maintained and in relation to financial standing.
5. The TM, Julie Hesketh, was separately called-in.
6. Reference was made to the accumulation of 14 prohibitions, one of them "S" marked, to the issue of fixed penalties and an offence prohibition, as well as an unacceptable MOT initial failure rate of 55% over 5 years and 20% over 2 years.
7. David Hesketh appeared before me at the Public Inquiry at Golborne on 10 December 2018. He was not legally represented but was assisted by Steven Begley, a transport consultant whom he had nominated as a new TM.
8. Julie Hesketh chose not attend but Mr Hesketh explained that she was fully aware of the proposed consideration of her reputation as a TM. He accepted that her occupation as an end-of-life specialist nurse was such that she had, over a period, ceased to have direct involvement in his business, which he had therefore subsequently run alone. He accepted that he did not have the relevant Certificate

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of Professional Competence (CPC) qualification himself. She had not provided any written representations about her position, the reasons for ceasing to carry it out, or why she had not resigned. I concluded that during a period now of considerable length, which I believe to have been measured in years, and which continued up to September 2018, there has been no professional competence.

9. The operator himself had provided a written representation through Steven Begley, the contents of which were re-iterated by him in his oral evidence. He had been in the business for 25 years but after the 2008 Public Inquiry had scaled activity back to the deployment of a single vehicle with trailers engaged in container work, carrying sawdust but more recently scrap and waste. Things changed in August 2017, when an opportunity had arisen for regular work for a second vehicle. Lee Broughton became his self-employed driver and a vehicle, DX57 BYA, was sourced through R & M Commercials on a lease-hire contract. Mr Hesketh acknowledged that taking on Mr Broughton, who he had become acquainted with over about 5 years, and taking on the second vehicle was a significant misjudgement, as had been his decision to keep the vehicle after the matters described in the sections below had transpired. Mr Broughton had been a liability, damaging the trailers and committing offences.

The AdBlue device discovered on 2 October 2017

10. David Hesketh told me that he had no prior knowledge of the device being fitted to his vehicle. It had been nominated on the licence on 3 October 2017, having been secured on lease-hire on 15 August 2017. The vehicle was stopped on 2 October 2017. I was told that in that short period it had not become clear that it was present or that the vehicle used no AdBlue. The vehicle was sourced through Volvo and the operator claimed that nothing caused him to believe any unlawful modification might have been made. The device was subsequently removed and the prohibition cleared. The vehicle continued to suffer emissions control system problems and had since been sold for export.
11. I was satisfied that it was more likely than not that Mr Hesketh was unaware of the device because of the very short period of ownership.

Other infringements on 2 October 2017

12. David Hesketh accepted that the prohibition issued that day for one loose wheel nut washer probably reflected a poor first use walk-round check by Driver Broughton, who had not told him of it immediately.
13. I was also told that his driver did not disclose the fact that he had also been reported for failing to take a qualifying break after 4.5 hours driving and an earlier failure to take sufficient daily rest of 11 hours required on 21 September 2017, having taken only 8 hours 15 minutes. He failed again to report his conviction and the imposition of a financial penalty to Mr Hesketh, despite pressing him for information.

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14. When interviewed by TE Batten in November 2017, Mr Hesketh indicated he was contemplating “finishing” his driver and returning to a single vehicle. In the event, it was admitted that Mr Broughton was not let go until September 2018, having been issued only with a written warning. Mr Begley described Mr Hesketh as being too ready to see the best in people and to give repeated “last chances”.
15. I conclude that Mr Hesketh failed to exercise due diligence in taking on the driver, Lee Broughton, failed to manage him properly or properly to set down his expectations of him at the time he was taken on.
16. Further, I conclude that the business relationship described to me as being of ‘self-employment’ of that driver, in fact bore all of the hallmarks of ‘employment’. In the sense that the driver did not own or insure the vehicle provided, bore none of the risk of the employment and was specifically not entitled to substitute another person for himself as a driver, without notice. I find that this was a relationship of employment. I further find as Mr Hesketh admitted that his accountant had advised he needed to exercise care in the deployment of self-employed drivers, nevertheless, this arrangement had persisted inappropriately.

The findings of VE Wilson in July 2018

17. VE Wilson had expressed concern about the TM arrangements, since it was admitted to him that Julie Hesketh was no longer actively involved in the business.
18. He had found stretching of preventive maintenance frequencies, inadequate and incomplete record keeping and an absence of records for vehicles no longer on the licence, despite the requirement to retain them for 15 months. The MOT initial pass rate was sub-standard and a series of prohibitions had been issued with as many as eight in 2017.
19. I found that the evidence of VE Wilson was not in dispute, it was balanced in tenor and I accepted it as credible. I found that the fundamental failures disclosed to have been matters that ought easily to have been noted and acted upon by any competent TM. I conclude the absence of a TM has prevented these matters from being suitably addressed with a consequent risk to road safety.

Prohibitions

20. I noted prohibition rates for vehicles over 5 years and 2 years of 41% and 36% respectively and therefore considerably in excess of the national average. The rates for trailers were however in close alignment with the national average. The Volvo vehicle suffered four of the prohibitions. Whilst Mr Hesketh was critical of some matters the subject of prohibition, I noted other unchallenged issues related to steering, wheel security and which pointed to the poor standard of driver checks also relevant to road safety.

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The undertakings previously added to the licence

21. Three bespoke undertakings were attached to the licence in 2008, at the time of its curtailment. I have ignored the one relating preventative maintenance inspections as it lacks any clarity (the third one listed in paragraph 2 above).
22. Mr Hesketh has however admitted that those others requiring quarterly roller brake tests and specifying a need for an independent audit of maintenance arrangements were not met. I noted from my perusal of the records produced, that even now, measured brake tests are not carried out at each inspection and that the evidence of roller brake testing is reserved only for MOT presentation.
23. I find that those undertakings have been breached and despite the fact Mr Hesketh claims that non-compliance was inadvertent and unintentional that in the period since these matters were pointed out, no convincing attempt has been made to correct the position.

The findings of TE Batten

24. TE Batten recorded failures to download driver cards in a timely manner, incomplete downloading, an absence of systems to manage the Working Time Directive, no proper induction arrangements for new drivers, and a failure by the operator to come to terms with digital tachographs (or initially to use a third party agency to analyse data).
25. TE Batten drew attention to downloads of vehicle and driver cards on 6 and 5 occasions respectively since January 2017 – yet only one formal analysis in that time, despite the consultant Mr Begley being used because Mr Hesketh had not met up with him. I further noted in the records produced by the operator recent infringement reports showing current, basic failures in terms of breaks and working time breaches. A record of “unknown driver” (missing mileage) events was included but it revealed 12 such events from June to November 2018, ranging from driving for 6 minutes without a card inserted, up to 37 minutes. No annotations were recorded to explain such records. I conclude that management of drivers’ hours compliance remains somewhat rudimentary at present; no evidence of improvement was provided.

Financial Standing

26. For the current fleet, the operator is required to evidence availability of £16,750. A calculation completed by my staff demonstrated an average of only £{REDACTED} insufficient even for one vehicle. The operator claimed the availability of credit cards with average unused balances in his name, which would, given an opportunity to produce them, evidence financial standing in the sum of £7,950, enough for one vehicle.
27. I find that financial standing is not currently met. The calling-in letter refers to the need to produce evidence including reference to credit cards. I am not prepared to allow a further period for the operator to produce evidence to meet the requirement.

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Submissions

28. The operator invited that he be permitted to voluntarily curtail the licence to 1 vehicle and 2 trailers with immediate effect, to appoint Steven Begley as TM in place of his wife and for the licence to continue on the basis of him reverting once again to operation effectively as an owner-driver.
29. In a private session, {REDACTED}
30. Steven Begley told me that he had been assisting Mr Hesketh since he was contacted initially *during the visit* by TE Batten in October 2017. The TE had described Mr Hesketh as a “dinosaur” which was said to have struck a chord with him that things needed to change.
31. Mr Begley described an advisory role in moving him “in to the modern age”. He had collated paperwork, emphasised the importance of the paper trail and persuaded of the need to update the vehicle defecting system. He had persuaded Mr Hesketh to swap maintenance to a third party contractor, and away from Mr Hesketh’s son, Stephen Hesketh, who had been responsible for the incomplete records of maintenance, some where the sheet itself did not demonstrate any actual checking and which had been carried out in the open air, with no pit or proper facilities. Further, he told me he had pointed to the inappropriateness of the completion of checks by David Hesketh himself, which contained similar recording shortcomings and one report of which was completed only in pencil. When pressed, Mr Begley accepted my concern that since he had been involved from October 2017 that progress to date, and particularly between the visit of the TE and that of the VE 9 months thereafter, had not been as quick as was desirable.

Consideration and decision

32. Having considered these findings, I have balanced together the positives and negatives, taking into account the operator’s intention (if permitted to do so) to operate a single vehicle and trailers. I note that substantial problems arose when a further driver and vehicle was in use and that the risk associated with the need to manage another driver might therefore be avoided. I noted the nomination of a newer vehicle on the licence and the benefit likely to follow from an active TM, carrying out his role.
33. On the other side of the balance, I have placed the findings already referred to in the sections above but also my assessment of whether I am able to trust David Hesketh going forward.
34. I find I do not have the level of confidence in him that is necessary for me to be satisfied he will be a compliant operator in the future. I am drawn to that conclusion because of the seriousness of my findings that I have set out.

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35. There has been an extended period when no TM has been in post and therefore no professional competence. I find that someone as well experienced in the industry as Mr Hesketh will have known what he was doing was wrong. Whilst I find that the series of very sad and traumatic personal circumstances may well have contributed to poor judgements about what needed to be done, I cannot conclude that 8 or 9 years later, that there was not by then a realisation that something needed to be done. I find it more likely that not that Mr Hesketh has “buried his head in the sand” and taken a risk but was caught out. His position is compounded by the failure to act upon matters once DVSA became involved in October 2017 and at that time to regularise matters when professional advice was to hand. The delay in these matters coming to a hearing ought to have provided the operator to have his affairs in order, the truth of the matter is that very little has changed and that what has been done is “too little, too late”.
36. I find that the failure, even with the availability of professional advice, to address shortcomings in maintenance by ceasing at a much earlier juncture the maintenance agreement with Stephen Hesketh, to address drivers’ hours issues and to terminate the relationship with Lee Broughton when he had so manifestly let down his employer, to be significant. No coherent explanation was offered to address this catalogue of failure to act. I can only conclude that the maintenance of the status quo suited Mr Hesketh.
37. I find that the operator will have gained an unfair competitive advantage throughout the period when he has not employed a TM.
38. When I come to ask myself whether it is appropriate that I find the operator’s repute is lost and that it is proportionate that he be excluded from the industry, I must answer in the affirmative. I find the operator to be without good repute, financial standing and professional competence and that he is rightly removed from it.
39. In reaching these conclusions, I have been guided by the Senior Traffic Commissioner’s Statutory Guidance Document No.10 – The Principles of Decision Making and the Concept of Proportionality. I am satisfied only severe regulatory action is consistent with my findings and which will address the risk of the safety of others on the road, the principle of fair competition in the industry and upholding the standards of the licensing regime.
40. It is appropriate that I allow a short period (which takes into account Christmas) before the order that I make in accordance with Section 26 (1) (b), (c) (iii), (e), (f) and (h), and Section 27 (1) (a) will take effect. The revocation will be from 23:45 hours on 11 January 2019.
41. I find the repute of Julie Hesketh to be lost. She has chosen not to engage with the regulatory regime. I note she is engaged in an entirely noble and very important role, she has however, by continuing to allow her name to be associated with this licence, facilitated the perpetuation of a licence which should have been brought to account a long time ago. Such an act is unbecoming of a TM. I declare her unfit to hold office as a TM and disqualify her indefinitely from holding such a role in the future. Rehabilitation measures are inappropriate in this case.

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42. I make no adverse finding in respect of Steven Begley. I do not approve his appointment as TM for obvious reasons, as this licence is to terminate very shortly.

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

Simon Evans
Traffic Commissioner
for the North West of England
11 December 2018