



SOUTH EASTERN AND METROPOLITAN TRAFFIC AREA

DECISION OF THE TRAFFIC COMMISSIONER

**PUBLIC INQUIRY HELD AT IVY HOUSE, EASTBOURNE, ON 20 NOVEMBER
2018**

APPLICANT: METRO SERVICES LONDON LTD – OK2013046

Decision

1. The application made by Metro Services London Ltd for a restricted goods vehicle operator's licence is refused, pursuant to Section 13B of the Goods Vehicles (Licensing of Operators) Act 1995 ("the 1995 Act").
2. The interim licence will accordingly terminate at 0001 hours on 12 January 2019

Background

Applicant details

1. On 23 April 2018, Metro Services London Ltd applied for a restricted goods vehicles operators' licence for six vehicles. The application was signed by Phillip Fitzsimmons, then a director of the company. The other director was (and remains) Steven Pryor.

Previous licence history

2. Mr Fitzsimmons and Mr Pryor have an extensive operator licence history.
3. Mr Fitzsimmons was the director of Amtrexx GB Ltd which held operator's licence OK0230595. The licence was revoked at a public inquiry in November 2005 and the company went into liquidation in 2007. This was not declared on the present application.
4. Mr Fitzsimmons held licence OK1008426 from 2002 as a sole trader. The licence was curtailed at a public inquiry in 2006 and terminated in 2012 when it was not renewed. The licence was not declared on the present application.
5. Mr Fitzsimmons was the director of Aggregate Tippers Ltd which held licence OK1031503, granted in 2002. The licence was curtailed from six to four

vehicles at a public inquiry in 2006 and further curtailed from four to two vehicles at a public inquiry in 2007. The licence terminated in 2009 when it was not renewed. The licence was not declared on this present application.

6. Both Mr Fitzsimmons and Mr Pryor were directors of Westmoor Concrete Ltd which held licence OK1083470 from grant in 2008 until 2011 when it was revoked at a public inquiry owing to unsatisfactory maintenance and lack of financial standing. The holding of the licence was declared on the present application, but not its revocation.
7. Both Mr Fitzsimmons and Mr Pryor were directors of Westmoor Utilities Ltd which held licence OK1108850 from 2012 until 2016 when it was revoked due to lack of financial standing. There were suspicions that the company had been lending its licence to Metro Concrete Ltd
8. Both Mr Fitzsimmons and Mr Pryor were directors of Metro Concrete Ltd which applied for a licence in 2016. I considered the application at a public inquiry in September 2016. Metro Concrete was found on several occasions prior to the inquiry to be already operating a vehicle (using a disc from the by this time revoked licence of Westmoor Utilities Ltd). Mr Fitzsimmons told DVSA that he would rather take the risk of being caught than run his business into the ground. I refused the application on the grounds that because of its persistent illegal operation the company was not fit to hold a licence.
9. On the present application by Metro Services London Ltd, Mr Fitzsimmons declared his association with the licence held by Westmoor Concrete Ltd and stated it had gone into receivership. He did not mention his past connection with Amtrex GB Ltd which had gone into liquidation and stated that no one connected with the present application had ever had a licence refused, curtailed or revoked.
10. Asked by the central licensing office in Leeds to account for the failure to declare the revoked/curtailed licences and the refused application, Mr Fitzsimmons replied on 17 May 2018 that this was “purely an oversight on my part.”
11. In the light of the history of the directors of Metro Services London Ltd I decided to consider the application at a public inquiry. The letter advising the company that I had decided to do so was sent on 22 August 2018. The next day I granted the company’s request for an interim licence as I understood that the application had been prompted by the forthcoming changes to the law which would bring volumetric concrete mixers within the ambit of operator licensing. Metro Concrete London Ltd had hitherto been operating these vehicles without an operator’s licence (perfectly legitimately) but if I were to refuse an interim, they would have to cease operations on 1 September 2018 when the new licensing requirement came into effect.
12. On 29 August 2018, I received information from the solicitor representing the company, Philip Brown, that Mr Fitzsimmons had resigned as a director of the company on 21 August 2018, although I note from Companies House records that this resignation was not notified to them until 30 August 2018.

Public inquiry

13. The main call-up letter to the inquiry was sent on 28 September 2018 citing Section 13B, C and D of the 1995 Act.
14. A few days before the inquiry, Philip Brown sent me a submission which made the following points:
 - i) although Steven Pryor had been the director of companies which had held operator licences in the past, he had never been involved with the transport side of things, leaving that to Mr Fitzsimmons until the latter had resigned in late August 2018;
 - ii) Mr Pryor had not been involved in the completion of the application form. The failure to declare past licences, revocations etc was because a transport consultant had completed the application form and had not been fully apprised of the directors' history;
 - iii) Mr Pryor had now brought in an experienced transport consultant to assist with and advise on compliance;
 - iv) Mr Pryor was willing to undertake to attend an operator licence training course within three months;
 - v) in conclusion, Mr Pryor could be trusted to run a compliant operation and was not unfit to be a director of a company holding an operator's licence.
15. The inquiry took place in Eastbourne on 20 November 2018. Present were director Steven Pryor and Philip Brown of AMD Solicitors, representing.
16. Mr Pryor's evidence essentially made the same points as in Mr Brown's submission above. I noted that Mr Fitzsimmons remained, according to Companies House records, the sole shareholder of the company. I also noted that the company bank statement were still being addressed to Mr Fitzsimmons. These were indications that Mr Fitzsimmons retained a major role within the company. Mr Pryor said that the shares could be transferred to him and that he had asked the bank to change the names on the statement three weeks ago.
17. I noted that the public inquiry was taking place on 20 November, three months almost to the day since Mr Fitzsimmons had resigned as director and Mr Pryor taken over transport matters. Why had he not attended an operator licence management course during those three months, rather than promising to do so some time in the next three? Mr Pryor acknowledged that he had not been as dynamic as he could have been.
18. I asked why, knowing what he did about my decision in September 2016 to refuse the application made by Metro Concrete Ltd because the company and Mr Fitzsimmons were not fit to hold a licence, Mr Pryor had not made more of an effort to see that the present application was completed correctly and

honestly, rather than just leaving it all to Mr Fitzsimmons. Mr Pryor could not give a clear explanation for this other than to repeat that he had not been responsible for transport matters.

19. The applicant had brought only one safety inspection sheet, despite having operated vehicles since 23 August on an interim licence and in practice before then (when no operator's licence was required but vehicles were still of course regularly inspected). I gave the operator a further day in which to produce the absent records, which it did. I noted that the preventative maintenance inspections done by main dealers on computerised records were in much greater detail, with many more defects detected, than the inspections done by "MB Commercials HGV Repairs" who appeared to be Mike Bishop a sole trader. For example, the inspection made of vehicle FJ64 AVZ on 13 August found 15 defects and the subsequent inspection on 20 September 22 defects. Rectification action was not clear, as all the defects were marked only "reported". Quite a few of the defects were characterised as "dangerous".

Conclusions

20. Mr Fitzsimmons and Mr Pryor have a long history of businesses which have had their licences curtailed or revoked and which have gone into liquidation. In 2016 I refused an application from Metro Concrete Ltd after that company had been found to be repeatedly flouting the law, despite warnings not to do so, with an explicit comment from Mr Fitzsimmons that he would rather do this than lose business.
21. Against that history, I would have expected Mr Pryor to take a much greater interest than he had previously done in the proper management of the company and in the correct and honest completion of the application form for the operator's licence. But he did not do this. Everything was left to Mr Fitzsimmons, who sought to mislead the central licensing office by omitting almost all of his poor history on the application form. I do not accept that this was "pure oversight". Mr Fitzsimmons must have been well aware that he had had several licences revoked and an application refused: he could not possibly have simply "overlooked" it.
22. Mr Pryor simply did not take the interest he should have done. Even on the date of the inquiry, he had still not yet gone on an operator licence management course or made arrangements for bank statements to be sent to him. I would have expected someone with his poor licence history to have made every effort to convince me that the next time round would be different: instead Mr Pryor presented some rather feeble excuses for past and present inaction. He did not at all reassure me that he was likely to drive forward compliance and escape from the influence of Mr Fitzsimmons.
23. Even after Mr Fitzsimmons' resignation as director, there are substantial indications that he continues to be the power behind the throne. On the date of the inquiry he was still the sole shareholder in the company and bank statements were being addressed to him (Mr Pryor had failed to change that in the intervening three months).

24. Maintenance documents suggest that some of the old maintenance shortcomings on previous licences persist, although as the documents were supplied only after the public inquiry I was unable to question the company about these and so I stop short of making any definite finding about maintenance.
25. In conclusion, because of the lack of honesty in the application process, and because of Mr Pryor's failure to convince me that he truly has matters in hand, I find that the applicant is not a fit company to hold a licence and I am accordingly refusing the application under Section 13B of the 1995 Act.
26. Having refused the application the interim licence must now be terminated. I am giving a short period of grace until 0001 on 12 January 2019 for this termination to take effect.



Nicholas Denton

Nicholas Denton
Traffic Commissioner
12 December 2018