



TRAFFIC COMMISSIONER'S DECISION

G QUINN INTERNATIONAL UK LIMITED

LICENCE NO. OK2003821

AND

PAUL SINCLAIR - TRANSPORT MANAGER

GOODS VEHICLES (LICENSING OF OPERATORS) ACT 1995

Decision

1. Pursuant to adverse findings under Section 26(1)(a), (c)(iii), (f) and (h) of the Goods Vehicles (Licensing of Operators) Act 1995, and Section 27(1)(a) of the said Act, the Operator no longer meets the mandatory requirements of Section 13A(2) of the 1995 Act - good repute, professional competence and financial standing. Accordingly, the Licence is revoked with effect from 23:45hrs on Tuesday 11 December 2018.
2. Gerald Quinn (date of birth December 1975) and Paul Sinclair (date of birth April 1991) are disqualified from holding or obtaining an Operator's Licence or being involved in any entity that holds or obtains a Licence in Great Britain, for an indeterminate period from 23.45 on Tuesday 11 December 2018, as provided for by Section 28 of the Goods Vehicles (Licensing of Operators) Act 1995.
3. Upon a finding that Paul Sinclair no longer satisfies the requirements of Section 13A(3) of the Goods Vehicles (Licensing of Operators) Act 1995 to be of good repute in accordance with Schedule 3 of the said Act and a finding that he is unfit to manage the transport activities of an undertaking, Paul Sinclair is disqualified for an indeterminate period from acting as a Transport Manager on any Licence in a Member State from 23.45 on 11 December 2018, pursuant to Article 4 of the regulation EC107/2009. It is not appropriate to set remedial reassures at this time but there is liberty for Mr Sinclair to apply for further detail in future.

Background

4. The full background is set out in the Public Inquiry bundle case summary and a copy is attached marked "Annex A". The case summary, together with the call in letter, set out in detail the matters which led to the Operator and Transport Manager being required to attend the hearing.

The Hearing

5. The Hearing commenced and concluded at the Tribunal Room, Office of the Traffic Commissioner, Ivy House, 3 Ivy Terrace, Eastbourne, BN21 4QT on Wednesday 28 November 2018. The case was listed for 10:00hrs and the Call-In Letter requires the Operator and Transport Manager to attend at least one hour before with records as specified in the Call-In Letter. By 10:00am there was no-one present save for the Driver & Vehicle Standards Agency Vehicle Examiner, Mr Phillip Hierons ("the Vehicle Examiner"). At that point I asked my Clerk to try to contact the Operator and Transport Manager and check whether the Public Inquiry Brief sent by Special Delivery had been signed for. In the meantime, I also did some on-line checks in relation to G Quinn International UK Limited to see whether it may have recently ceased operating.
6. My Clerk left messages with Mr Sinclair on his mobile telephone number asking for a call back. She also spoke to a member of staff on the Operator's office land line who was unable to assist us as to the location of the Directors, stating "*I only work here*". The member of staff was able to provide two other telephone numbers but they were both international codes for Ireland. The Royal Mail Track and Trace system confirmed that the Public Inquiry Call-In Letter and bundle of papers were signed for at 09:34hrs on 12 October 2018 by G Quinn. No other letters have been returned. The Call-In Letter made it clear that Mr Quinn and Mr Sinclair were to attend as Directors and Mr Sinclair was to attend as Transport Manager, with his good repute to be considered.
7. The Company's public profile showed that there is also a G Quinn International Transport Limited based in County Donegal and that it appears to be a substantial business – running its own vehicles and acting as a freight forwarder. Mr Gerald Quinn is a director of the Irish company. The Irish website gives the UK and Ireland business addresses and telephone numbers. As a result of the enquiries set out above, I determined that the operator and Transport Manager were still in business in this country, that they are on notice of the proceedings and have chosen to absent themselves from the hearing.
8. At 11:00hrs the Public Inquiry commenced. I heard oral evidence from the Vehicle Examiner. At the conclusion of the Hearing, I confirmed that I would issue a written Decision within 7 working days.

The Issues

9. The issues are as set out in paragraph 4 above. The Operator has failed to lodge the required financial evidence (page 9 of the hearing bundle). Accordingly, I find that it no longer meets the mandatory requirement of financial standing. In the absence of a request for a period of grace, the Licence must be revoked on this ground alone (regardless of any other findings).

Documents and Evidence

10. I do not propose to set out all of the evidence, as it is a matter of record from the documents and the available transcript. I do refer to material evidence below as far as they inform my findings and conclusions.
11. Prior to considering my written Decision, I have reviewed:-
 - (i) The Public Inquiry Brief.
 - (ii) The hand-written record of telephone conversation for 28 November 2018.
 - (iii) Track and Trace record for Public Inquiry Brief.
 - (iv) Letter dated 29 October 2018 to the Operator confirming that the Variation Application to change the Operating Centre would be considered at the Public Inquiry.

- (v) Companies Registration Office (Ireland) printout for G Quinn International Transport Limited.
- (vi) *South Bucks District Council and another V Porter(FC) (2004) UKHL33, English v Emery Reimbold & Strick Ltd [2002 EWCA Civ 605 and Bradley Fold Travel Limited & Peter Wright v Secretary of State for Transport [2010] EWCA Civ 695* in relation to written decisions generally.
- (vii) Upper Tribunal Decisions and other guidance I consider relevant to this determination as listed elsewhere in this Decision.
- (viii) The Senior Traffic Commissioner's Statutory Guidance and Statutory Directions issued January 2016 and 2017 (the 2018 versions have only just been issued).

Consideration and Findings

12. The Vehicle Examiner adopted his Public Inquiry Statement un-amended and answered some clarifying questions. Mr Sinclair is clearly confused as to the roles of DVSA and the Traffic Commissioners. He sent the Operator's investigation response to my office in Eastbourne, referring to the Traffic Examiner as 'your representative'. The written response dated 21 June 2018 (pages 58/59 of the hearing bundle) provides explanations but in essence accepts the failings in the TEOR. The letter concludes, *"I hope we have demonstrated our promise to change our systems. When we move to our new Operating Centre and have worked for a few months I would welcome a voluntary audit/inspection as not only proof to yourself but to ourselves that we have made the required changes"*. As the Operator and Transport Manager failed to attend, there is no evidence of any improvements before me. Indeed, an application for a new Operating Centre was only made on 18 October 2018.
13. I now turn to the evidence of Traffic Examiner Mr Tribe at pages 29 and 30 of the bundle. That Statement sets out periods where a vehicle not specified on the Licence was said to be used by the Operator. The vehicle unit data demonstrates substantial missing mileage with a driver (unidentified) driving without a Digi card. At the roadside encounter on 30 October 2017, the driver Mr Szekely confirmed that the relevant vehicle was being operated by G Quinn International Transport UK Ltd and that he was employed by them. On the 6 occasions identified as having missing mileage, Mr Szekely was driving immediately before or after that period. Accordingly, in the absence of any other evidence from the Operator or Transport Manager, I am satisfied that the vehicle was being used under this Licence and it was responsible for the driving off-card.
14. The Operator and Transport Manager have failed to engage properly with DVSA and the Office of the Traffic Commissioner. By way of example:-
 - Mr Sinclair's explanation for missing the meeting with the Vehicle Examiner on 4 June 2018 is not credible. He chose the date and time from two options and one assumes he did so by checking his diary.
 - The Call-In Letter was sent on 11 October 2018 and was signed for. The Operator has failed to return the attendance slip, lodge finance by 21 November 2018 or at any point prior to or during the Public Inquiry.
 - Requests for call-backs from my Office have not been complied with.

15. At the same time, there was some action but it is entirely self-serving, namely creating an online application dated 18 October 2018 for a new Operating Centre. This should have been done some months previously.
16. There is suggestion of a period where it has not been operating and vehicles were removed from the Licence. However, in light of my findings in paragraph 13, I cannot be satisfied that operations ceased. The acts and omissions set out above are incompatible with the Operator Licensing regime. The regime is based on trust and that trust breaks down where Operators and Transport Managers fail to pay proper attention to the Licence requirements or engage with those tasked with upholding the law. The evidence before me draws a picture of a Transport Manager failing to exercise continuous and effective control of the transport operations and directors failing to monitor and control the same. In such circumstances, whether an accident happens is a matter of chance. It also amounts to unfair competition because time that should have been spent on compliance will have been focused on the commercial side of the business. Accordingly, I have reached the Decision set out in paragraph 1 above.
17. In T/2010/29 David Finch Haulage the then Transport Tribunal said:

“The principles that derive from these and other cases on the point can be simply stated. The imposition of a period of disqualification following revocation is not a step to be taken routinely, but nor is it a step to be shirked if the circumstances render disqualification necessary in pursuit of the objectives of the operator licensing system. Although no additional feature is required over and above the grounds leading up to revocation, an operator is entitled to know why the circumstances of the case are such as to make a period of disqualification necessary”.
18. In my judgement, disqualification is entirely appropriate. The Operator requested the Public Inquiry after I proposed to revoke the Licence. Since then it has not produced one piece of evidence to suggest why I should not revoke. On the chronology set out above, I am led to the conclusion that the request for a hearing was nothing more than a delaying tactic. Accordingly, I have reached the Decision set out in paragraph 2 above.
19. Mr Sinclair is also the Transport Manager. My disquiet set out above is equally relevant in relation to Mr Sinclair’s good repute as a Transport Manager. The role of a professional Transport Manager is to transparently provide assurance of lawful operation at all times. The admission at paragraph 12 is self explanatory. I have no evidence of any improvement since June 2018. It follows that Mr Sinclair should not be surprised that I find his good repute as a Transport Manager lost. Accordingly, I have reached the Decision set out in paragraph 3 above.
20. All the disqualifications are for an indeterminate period, as I have not had the benefit of meeting Mr Quinn or Mr Sinclair to make an informed decision on whether a specific period is appropriate. For the same reason, I have not set remedial measures for Mr Sinclair at this time.



Miss Sarah Bell
Traffic Commissioner
London & South East England
5 December 2018

Case Summary

**Case called under Sections 26, 27 and Section 28 of The Goods Vehicles
(Licensing of Operators) Act 1995**

CURRENT ISSUES:

On 30th October 2017 vehicle YP61 OZS was stopped by a TE and the driver confirmed he was working for the company. The TE states that a disc in the name of the company was being displayed. The TE downloaded the tachograph unit and found large periods of driving without a card, some of which exceeded the limit of 15 days permitted by any single driver to drive without a card. The TE telephoned the company and spoke to Paul Sinclair who said he would investigate the matter and inform the TE what was the cause of the matter but he did not provide anything to the TE. The TE suspects that the driving without card events on 3rd, 18th, 19th, 20th, 21st and 26th October 2017 may have been falsifications by omission.

Vehicle YP61 OZS was specified on the licence on 27th June 2017 and removed on 30th July 2017. The vehicle was stopped at 12.02 on 30th October 2017 and the record shows it was specified on the licence on 30th October 2017 at 12.48:

Vehicle Removed	YP61OZS	12/11/2017 15:38	PAUL SINCLAIR
Vehicle Added	YP61OZS	30/10/2017 12:48	PAUL SINCLAIR

It therefore appears that at the time the vehicle was stopped it was not specified on the licence. The vehicle record shows that on 30th October 2017 vehicle GN64 XWT was specified on the licence and PX10 DHC was removed from the licence on 30th October 2017 at the same time as YP61 OZS:

Vehicle Removed	PX10DHC	30/10/2017 12:48	PAUL SINCLAIR
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It therefore appears that when YP61 OZS was stopped at 12.02 there were already 2 vehicles specified on the licence and so there was no margin in place to operate it and the company were operating more vehicles than they were authorised to do.

The case was referred to the local area and it was decided to ask a VE to carry out a maintenance investigation.

The VE visited the stated operating centre on 17th May 2018, having tried to contact the company on 15th May 2018, but found that the company and its vehicles were not there. The VE spoke to another operator who was using the same site and he was told that the company had never used the site but they had been 'seen over at another site within the area'.

As a result, the VE wrote to the company regarding the failure to establish contact and thus not being able to check the records. A date of 4th June 2018 was agreed with Paul Sinclair to meet at the Belvedere DVSA office but Mr. Sinclair did not attend.

A meeting then took place at Belvedere on 7th June 2018 and Mr. Sinclair only produced 1 DDR for DU61 AGX which had been specified on the licence between 12th November 2017 and 22nd February 2018 and nothing for any other vehicle e.g. GN64 XWT. Following the removal of DU61 AGX from the licence no other vehicles have been specified on the licence until YE61 LZL on 7th October 2018.

The VE states that the company appeared to hire all their vehicles from Blockley Rental Ltd and MC Rental but no PMI records were produced except 1 for FH06 FJD which was never specified on the licence. The VE says that the company work under traction services and third party trailer scheme and they were not aware of their responsibility in respect of both receiving and checking inspection records before using hired vehicles.

The company have incurred 2 prohibitions, 1 on a trailer and 1 on vehicle GN64 XWT.

Mr. Sinclair provided a written response to the shortcomings found and he said that the VE had been unable to contact him in the first place because he left his mobile phone in the UK when having to return urgently to Ireland. The company's office number had never been added to the licence record.

In terms of the vehicles he said that from 15th January 2018 they had 'decided to leave back our hired vehicles and use only sub-contractors'. Vehicle GN64 XWT was removed on 16th January and DU61 AGX was removed on 22nd February 2018. He said that he found shortcomings in the driver defect system and 'found that administration staff were (not) auditing drivers regularly enough'. He therefore 'decided that the best course of action would be to stop our own vehicles (and) better train the required staff and start again a few months later'. He also said that at this time they had also decided to move operating centre to Dover 'as it would better serve their customers'. He said that that day (21st June) they had received confirmation regarding the yard rent and so the move would 'begin next week'. However to date no variation application has been received to add a new operating centre and as stated above a vehicle has again been specified on the licence.

In terms of not meeting on 4th June, he had mistakenly believed that the meeting was on 6th June.

In respect of PMIs for trailers, he said he had 'never thought it important to get PMI sheets for each of these' but moving forward the company would be using its own. However, the company are not authorised to operate trailers and the vehicle they specified on 7th October 2018 – YE61 LZL, is 44,000 tonnes.

He acknowledges that the prohibition issued to the trailer was, as a result of the walk round check not being completed that morning but they will resolve this issue when 'working again next month'.

The matter was referred to the OTC and as no vehicles at that time were specified on the licence and there appeared to be no operating centre, it was decided to issue the company with a 'propose to revoke' letter. Mr. Sinclair responded to this letter and much of the contents were similar to that in the letter to the VE. He asks in the letter for an opportunity to prove his intention to 'operate a safe and efficient fleet'.

In the light of this, the Traffic Commissioner has decided to convene a public inquiry to consider the company's licence at a public inquiry along with Paul Sinclair's good repute as a transport manager.