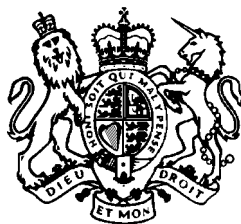


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DECISION OF THE TRAFFIC COMMISSIONER FOR THE NORTH WEST OF ENGLAND

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

SCDD LIMITED
OC2008878

Public Inquiry at Golborne
on 11 January 2019

Decision

I make findings in respect of this licence under Section 26 (1) (f) and (h) of the Act: the latter in respect of both fitness and the sufficiency of financial resources.

The operator's licence is revoked. The order will take effect immediately, since the licence is not being operated at present. The operator will arrange to return all vehicle discs within 7 days.

I set down a period of disqualification of Adam Hayes for 24 months from holding or obtaining an operator's licence in any traffic area whether as a director, partner or sole trader.

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Background

1. **SCDD Limited** (hereafter SCDD) (OC2008878) is the holder of a Restricted Goods Vehicle Operator's licence for 7 vehicles and 4 trailers, only granted on 9 January 2018. The directors are Adam Hayes and Adam Trapp. The company is engaged in the provision of "super car" race-day experiences and events for its clients in the UK and elsewhere. Large goods vehicles are utilised by the operator to transport the cars to race tracks and to provide support for those taking part in and running the racing activities then taking place.
2. The calling-in of the operator to Public Inquiry was triggered by the stop of a company vehicle on 12 April 2018, when it was found that Driver Whincup did not have the correct and necessary entitlement for its use that day. It was also revealed that the vehicle's tachograph had not been downloaded for over 4 years, albeit it transpired the vehicle was only added to this licence on 2 February 2018.
3. The calling-in letter referred to a failure to honour licence undertakings, to notify change and to observe the drivers' hours requirements, as well as to alleging material change affecting the operator's fitness to hold the licence and the sufficiency of financial resources to keep vehicles on the road in a fit and serviceable condition. References to Section 26 (1) (b) of the Act for breach of conditions relevant only to a Standard National Goods Vehicle Operator's licence were included in error, and not put to the operator.

The Hearing

4. Adam Hayes alone attended the Public Inquiry in Golborne on 11th January 2019 unrepresented. Adam Trapp was not present as he was in South Africa running the company's operations there during the UK 'off season'.
5. Adam Hayes had provided a written "presentation" running to more than five pages, together with a series of annexes providing further information about the matters to be raised at the hearing.
6. I heard evidence and representations from Adam Hayes and was able to review the records that he had been required to bring to the hearing. The matters arising from his evidence and in consequence of the matters I put to him are suitably dealt with in the sections below. At the end of the hearing, I indicated to the operator that I would give the matters raised further careful attention, and then provide a written decision.

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The vehicle encounter in April 2018

7. An SCDD vehicle and trailer combination, driven by Driver Whincup, was found by DVSA to require the holding of a full C + E driving licence category, since the trailer in question was in excess of 750 kgs. Whilst the driver held suitable provisional entitlement, he was not displaying L-plates, nor was he accompanied by a qualified driver. It transpired that the driver had been booked in for (and then passed) his C + E driving test, only a week later. Driver Whincup had said in interview that he was sorry that he had “got it wrong”.
8. Adam Hayes was adamant that the offence was committed in error and that this was not an example of “jumping the gun” in respect of the qualification to drive. He disputed the DVSA finding that the vehicle’s trailer was in excess of 750 kgs, albeit he had raised no formal objection about the DVSA finding, nor subsequently weighed the trailer.
9. He accepted however that the tachograph data had not been “locked in” using the company card in the period since the vehicle had come into the company’s possession.

Failure to notify material change to directorships

10. I was told about the un-notified business change, wherein the former co-director Philip Wardle had left the company on 23 January 2018, having resigned as an officer. Adam Hayes accepted responsibility for not notifying the change in directorship, as he ought to have done, but offered that it arose out of ignorance.

Financial Standing

11. My clerk had carried out a financial calculation based on the provision of company bank statements but an average of only £ {REDACTED} was demonstrated as available, when the financial requirement for the fleet is £13300. The sum proved would not be enough even for a single vehicle.
12. I was told that the parting from Philp Wardle had not been amicable, since {REDACTED}. Mr Wardle nevertheless remained a shareholder, was therefore a recipient of dividends and was said to be entitled to {REDACTED}. It was alleged he had previously {REDACTED}.
13. Adam Hayes provided statements from his personal bank account but self-evidently not in the operator’s name and therefore not capable of contributing to the financial requirement for the licence. He showed me that company monies were being placed into that account for safekeeping. It appeared that sufficient monies were available, if transferred into the company’s account.

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14. He offered to resolve the position by {REDACTED}.

Regulatory history of Adam Hayes

15. Papers served also referred to Adam Hayes' recent history before the regulator. Hayes Freight Ltd (OD1113183) had been the holder of a Standard National Goods Vehicle Operator's licence for 21 vehicles and 32 trailers in the West Midlands (OD1113183). Adam Hayes had been the nominated Transport Manager (TM) on that licence, which had been granted in July 2013.
16. The operator and Adam Hayes TM were called to a Public Inquiry at Birmingham on 9 May 2018, within a few months of the grant of the SCDD licence. The written decision of the Traffic Commissioner for the West Midlands was included in the brief.
17. The Hayes Freight Ltd operator's licence had been revoked immediately, and its director, Dean Blake, was disqualified from holding or obtaining an operator's licence for 5 years.
18. In the same decision, Adam Hayes was found to have lost his repute as TM and he too was disqualified for 5 years from acting in the role.
19. Again, the circumstances of the direction then made in respect of Adam Hayes and his repute were not notified to my office as a material change affecting the fitness of SCDD to hold this operator's licence.
20. That company had been engaged in general haulage and had been owned by Adam Hayes until its sale by him to Dean Blake in December 2015. Mr Hayes described being retained in the business initially, whilst instalments of the sale price were completed and during which he was to continue in the role of TM. His father, Alan Hayes, worked for the company at the time and had assured him, when he ceased involvement with it completely in December 2016, that his name (as the TM) had been removed from the licence, another TM having been recruited.
21. In fact, Adam Hayes was never removed as TM as he said he believed, and the company had entered a creditor's voluntary liquidation on 20 October 2016, although vehicles had remained active on the operator's licence.
22. DVSA investigations had then followed a vehicle stop in November 2017 and Traffic Examiner (TE) Love had spoken to Adam Hayes in February 2018. At that time he had told her about the sale of the company to Dean Blake but had indicated that he had agreed to remain as TM "for 4 or 5 years" as part of

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the deal. He had chosen not to tell her the truth that he had ceased any involvement with the company almost a year earlier, a position he described as “awkward”. TE Love had concluded that he had not been exercising the role of TM continuously and effectively. It was noted there was a very high trailer prohibition rate, including the issue of an “S” marked prohibition and only sporadic driver defect reporting arrangements. Presented with this information, the West Midlands Traffic Commissioner suspended the operator’s licence, pending the Public Inquiry, to which Adam Hayes was called.

23. Neither Dean Blake nor Adam Hayes attended the Public Inquiry. In advance of it, Mr Blake confirmed that Adam Hayes had not been involved in the business since December 2016 and had only been there for a short time to “smooth the transition”. He apologised for his failure to remove Adam Hayes as TM.
24. Adam Hayes had then made a similar admission in writing but had not explained why he had failed to notify the Traffic Commissioner of his resignation as TM. A position that he had compounded when he had apparently returned to the business in early 2018, and in so doing, given the impression to DVSA staff that he continued to act as TM, when this was not the case. Further, it was noted that he responded to the shortcomings report issued by Vehicle Examiner (VE) Jones, signing the letter as “Adam Hayes - Transport Manager”.
25. Adam Hayes told me that he accepted he had been naive in his dealings after the sale of Hayes Freight Ltd. He had been begged by his father not to let them down, felt torn and did not know what to do. I asked him about the subsequent steps he had taken and designed to mislead DVSA about the position in respect of the licence. He was “gutted” by what had happened but unable to explain why he had not come clean at the time.
26. This was a serious default by Adam Hayes. Through his acts and omissions, he had facilitated the continuation of a substantial operator’s licence, when there had been no professional competence. He had pretended to be the TM when he was not and continued the initial deception with TE Love through to his dealings with VE Jones. His honesty and integrity had been very seriously undermined.

Maintenance records produced the hearing

27. I took the opportunity to sample the 8-weekly preventive vehicle maintenance records produced by the operator.

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28. Under questioning, it transpired that a number of the vehicle inspections were being carried out in-house by Adam Hayes himself, although some were carried out by other nominated contractors, Dart Engineering and by the FTA. Again, no notification about changed maintenance arrangements had been notified to my office. Whilst Mr Hayes had long experience in the trade, he did not hold formal qualifications for the role.

29. I made the following findings:

- C144551 – a trailer. The inspection records produced for the period 16 April 2018 to 24 August 2018 were timely but that undertaken by the FTA on 4 June 2018 was described as “*a limited inspection – due to low clearance and loaded with vehicles*”. Other reported items subject to replacement or repair included items capable of being detected during a competent first use driver check. No evidence of any check since 24 August 2018 was made available;
- Y5 CDD – a vehicle. The inspection records were produced for the period 24 April 2018 to 12 November 2018. On the evidence before me, no check had been undertaken in the period between 11 June 2018 and 13 September 2018, a period in excess of 3 months. Items repaired or replaced included vehicle defects including marker lights, which might have been detected during a competent first use driver check. In respect of the FTA inspection on 11 June 2018, the reason for not carrying out a calibrated brake test was recorded as being because the inspector was “*unable to disconnect the trailer/major defects found on trailer*”. I have subsequently noted a further discrepancy in the records produced, since the digital inspection certificate for the vehicle tachograph when it was calibrated by Highway Tachograph and Auto Centre Limited in February 2018, recorded an odometer reading of 806522, yet, the operator’s in-house maintenance record for 24 April 2018 refers to an odometer reading of 801007. At the least, the authenticity of the record was brought into question;
- TPK 677 - a vehicle. The inspection records were produced for the period 23 April 2018 to 10 October 2018. The caption on the report for 24 August 2018 as to the rectification of defects and certifying that the vehicle was safe and roadworthy was unsigned. Again, there were examples of defects that ought to have been capable of detection by drivers carrying out competent walk-round checks. The FTA check had again been “limited” because “*Unable to tilt vehicle cab due to wiring*”. On the evidence before me no check had been carried out since 10 October 2018;

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- LK08 FHH – a vehicle also registered as G5 CDD. The inspection records were produced for the period 16 April 2018 to 23 July 2018 and were timely. Again, there were examples of defects that ought to have been capable of detection by drivers carrying out competent walk-round checks. The FTA check on 4 June 2018 had not included a calibrated brake test because of “*Major defects found on inspection*”. On the evidence before me, no check had been carried out since 23 July 2018. The operator had produced two different RHA inspection report forms purporting to reflect checks undertaken on 23 July 2018. Neither carried any odometer reading, both were signed by Adam Hayes but listed different defects. I put it to him that this state of affairs bore all the hallmarks of an ill-executed attempt to mislead me into thinking that a check had been carried out when on a date when none had. Mr Hayes denied this was the case but the explanation offered that two checks had been done lacked credibility.

30. I concluded that there were grounds for real concern about the fitness and serviceability of the operator’s vehicles, the quality of the driver defect reporting arrangements and the preventive maintenance regime itself.

Closing representations by Adam Hayes

31. Adam Hayes asked for the opportunity for a fresh start in 2019, after what had been a fraught year for him professionally and personally. He accepted he had made some “awful decisions” but that he had been in transport all his life, his recent actions had been out of character and he offered the assurance that similar mistakes would not be made again, if he were given the chance to prove himself. He reckoned to “have had very few issues” as an operator. He claimed that nothing had been done “purposely”, with a view to gain or “wilfully to mislead”. He offered to carry out a TM refresher programme, even though he would not be acting in the role as such.

32. Addressing the impact of possible action taken against the licence, I was made aware that the “off season” had begun in November, and that the new season would not recommence until April 2019. Running the business without the company’s specialist transporters designed for low profile sports cars and the temporary buildings to support race activity, was such that obtaining third parties to carry out the transport would be impossible.

Consideration and decision

33. I make findings in respect of the licence under Section 26 (1) (f) and (h) of the Act: the latter in respect of both fitness and the sufficiency of financial resources.

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34. When I come to ask myself whether the so-called Priority Freight question, I conclude I cannot be satisfied that it is likely that this operator will be compliant in the future as I am unable to conclude that I trust the director, Adam Hayes. I cannot agree that Adam Hayes was acting other than deliberately and with intent to mislead, when the DVSA began its inquiries into Hayes Freight. The assurances given by him about future arrangements are hollow in the light of the findings in respect of his repute as a TM. Just as honesty and integrity is a necessary feature of the make-up of a TM, so it is as the guiding mind (or one of the guiding minds) behind a restricted licence. Assurances that things may be different are all very well but the process of rehabilitation from a position where someone has deliberately set out to mislead is a difficult one, and I am very far from satisfied it has yet been achieved by Mr Hayes. Further, I am frankly shocked that Mr Hayes, being aware of the significant impact on the question of his fitness and therefore that of this business of his own disqualification that Adam Trapp had not been present. It seems to me only to emphasise that he has little real understanding of the significance of what he has done.
35. I have taken into account that some matters that can be placed in the balance that is favourable of the operator. I note there are no prohibitions recorded as issued (albeit only one encounter is listed) and all the vehicles have passed their MOT at first presentation. I do note that there is an offer to attend a TM refresher course. These matters are however outweighed by the adverse findings that also show repeated examples of failure to notify material changes, serious concerns about the management of drivers, driver defect reporting arrangements and the maintenance of vehicles. Financial standing is not met.
36. I find Adam Hayes and the company for which he is a director not to have the requisite fitness to hold this licence.
37. When I go on to ask myself the Bryan Haulage question: Is the conduct of this operator such that it ought to be put out of the business? I conclude that it is appropriate and proportionate to answer that question in the affirmative, given the findings made in the balancing exercise undertaken. I conclude that road safety will have been placed at risk by reason of the failure to maintain vehicles, manage drivers and operate the licence in compliance with licence expectations.
38. It follows that this licence must be revoked. I understand that the vehicles are not currently being operated. The order will take effect immediately.
39. I am further minded to exercise my power to disqualify Adam Hayes, its director from holding or obtaining an operator's licence for a period. Such are my findings that a relatively significant period out of the licensed regime is appropriate. I set down the period of disqualification for him at 24 months. I

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take into account the Senior Traffic Commissioner's Guidance (Statutory Guidance Document No.10: the principles of decision-making and the concept of proportionality. This refers to a period between 1 and 3 years for a first appearance at Public Inquiry. This is not a first appearance and the concerns here are significant.



Simon Evans
Traffic Commissioner
for the North West of England
21 January 2019.

Postscript:

I received further unsolicited correspondence by email on the afternoon of 16 January 2019, after I had made my decision but before it could be transcribed. I have not therefore further considered its contents.