



**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)

**VIVIAGO LIMITED
OC2000983**

&

**STEVEN BARRIE LOGAN
TRANSPORT MANAGER**

Public Inquiry held at Golborne
on 27 November 2018.

Decisions

Viviago Ltd

On findings made in accordance with Section 27 (1) (a) in relation to the loss of good repute, and Section 26 (1) (b), (c) (ii) and (iii), (ca), (e), (f) and (h) of the Act, I direct that the licence of Viviago Ltd be revoked with effect from 23.45 hours on Monday 11 March 2019.

I further exercise my power to disqualify this company, and its director, Samantha Hughes, from holding or obtaining an operator's licence in any traffic area for a period of 18 months.

TM Steven Logan

I record that in the circumstances the repute of its Transport Manager Steven Logan is not lost but is marked as tarnished by the findings made.

I record a formal warning as to his future conduct.

I require him to enter into a personal undertaking that in the event he should offer himself as TM on any licence in the future, he will have completed a minimum two-day TM Refresher course from a training provider of repute and produced the certificate of his attendance thereon.

Background

1. **Viviago Limited (OC2000983)** is the holder of a Standard National Goods Vehicle operator's licence authorising the use of 7 vehicles and 7 trailers. The licence was granted on 15 March 2017. The sole director and shareholder is Samantha Hughes. The company is engaged in container work.
2. The company had previously been called to a Public Inquiry very shortly after the grant of the licence, since it had appointed Stephen John Evans as a director on 3 July 2017, at a time when he was disqualified from holding or obtaining an operator's licence by virtue of a decision of the Traffic Commissioner on 2 May 2013. He was in fact the subject of disqualification for 5 years until May 2018.
3. Having then been satisfied on the evidence that neither of the then, current directors, Samantha Hughes and Steven Logan, or the former director Nicholas Ellis were aware of Mr Evans' history, I allowed the licence to continue. Mr Evans was to have no further part to play whatsoever. There were criticisms of the company's due diligence process, which had led to Mr Evans' appointment and the readiness of the directors to retain Mr Evans in the business as a sales director, even after the deception perpetrated by him came out.
4. The decision, issued on 5 December 2017, concluded that the licence would be allowed to continue subject to a formal and final warning. An undertaking preventing Stephen Evans having any role whatsoever in the business and the grant of a period of grace to demonstrate financial standing were set out.
5. An additional undertaking (as set out below) referred to the completion of an independent audit to be carried out:

The operator will commission, at its own expense, an independent audit report from a trade association such as the RHA or FTA, or a suitably reputable and competent auditor experienced in this sector, which addresses the effectiveness of its maintenance systems and the management of its compliance with drivers' hour's rules. The report will be completed in March 2018 and provided to my office by 14th April 2018, together with the operator's proposals for implementing any recommendations contained within it.

6. That undertaking had been prompted by findings made at the hearing set out in that written decision at paragraphs 12 and 13 of the text, as follows:
 - *Whilst the hearing was not brought because of the maintenance record of the operator, I note that this business' OCRS (Operator Compliance Risk Score) is recorded as Red/Red. There is a prohibition rate since the grant of the licence of 29%, traffic based prohibitions run at 33% over the same period, as well as an imperfect MOT pass rate. In the short period during which this licence has been in force there have been recorded 5 prohibition notices, one of which was "S" marked;*
 - *These concerns are such that it is appropriate that I require the provision by the operator of an independent audit report, which reflects on compliance with the requirements of the maintenance of fit and serviceable vehicles,*

drivers' hours and the working time directive, as well as the systems and processes in place to support compliant operation.

The calling-in to this Public Inquiry

7. The calling-in to this Public Inquiry was prompted by the provision of the audit carried out by the FTA, which contained within it 39 recommendations, of which 15 of those matters were recorded by the auditor as falling into the category 1A. Category 1A signifies recommendations that are both "essential" and where action to address them, taking account of the practicality of completion and the urgency of the matter, is required quickly, within one month.
8. The brief also included a series of DVSA reports following roadside encounters and follow-up investigations, which referenced the issue of as many four "S" marked prohibitions, infringements by company drivers of the drivers' hours' rules and the operation of the tachograph equipment. In addition to the conviction of a driver for driving an LGV with excess alcohol in his body, which was not notified as required by the operator.
9. The calling-in letter referred to a breach of the condition on the licence to notify events affecting good repute, financial standing and professional competence. To the convictions of drivers, prohibition notices and fixed penalties issued. It referred to the failure to fulfil statements made on application for the licence and undertakings to keep vehicles fit and serviceable, observe rules about drivers' hours and to have an effective driver defect-reporting regime, as well as material changes relevant to holding the licence. Matters raised were such as to bring into question whether the operator retained its good repute, financial standing and professional competence.
10. Steven Logan, the company's internal Transport Manager (TM) was also called before me in respect of his good repute.
11. He had held the TM position for Viviago Ltd from 6 December 2017 to 15 February 2018: he had left because of health problems and because he was finding the position very stressful. He was though reappointed on 1 May 2018. No TM had formally been in post in the intervening period, during which time a period of grace had been allowed. A proposed new appointee, Eugene Marsh, a driver, had applied, taken up the role but had later withdrawn from the position, as it could not effectively be combined with his driving responsibilities. Since his return, Mr Logan had absences for several further periods; 10 days in June, 7 days in July and 4 weeks in September 2018 but was now fully engaged again, after illness and hospitalisation.
12. So it was that the operator and TM came before me at Public Inquiry at Golborne on 27 November 2018. Director Samantha Hughes attended with Steven Logan, in his role as TM. They were represented by Simon Newman, solicitor.
13. Vehicle Examiner (VE) Rimmer and Traffic Examiner (TE) Rowlands were present and gave evidence.
14. Another operator, Sofia Rose Transport Ltd (OC1144756) had been called to the conjoined Public Inquiry. The decision made in the case of that operator was given

on the day. Its operator's licence was revoked with immediate effect, good repute having been lost, financial standing not having been met because of its liquidation and professional competence found lacking, as the repute of its (separate) TM was forfeit. Its director, Nicholas Ellis, was disqualified from holding or obtaining an operator's licence for 2 years.

15. I reserved my decision regarding Viviago Ltd and indicated that I would provide written reasons. I had allowed a period after the hearing for further evidence to be provided. I fully accept and regret that this decision has not been issued within the 28 days that I originally intended, partly due to the intervention of Christmas. I offer my apologies to all concerned.

The evidence

The Vehicle Examiner's evidence about systems for assessing fitness and serviceability of vehicles:

16. VE Rimmer's evidence was not the subject of material dispute.
17. His attendance at the operating centre on 22 November 2017 had been prompted by the issue to a vehicle, YJ12 KLE, of a delayed "S" marked prohibition on 24 September 2017 – a so-called AdBlue cheat device had been fitted to that vehicle.
18. His second visit on 7 February 2018 had been triggered by a further such "S" marked prohibition, this time for such a device found on YJ10 LVM on 29 November 2017, only 7 days after his first visit. Rather to his consternation, the assurances given *during* his initial visit that all vehicles had been checked for devices and the ongoing use of AdBlue, had turned out to be false.
19. On that second visit, he was told that an oversight due to the unavailability of Steven Logan, had led to two vehicles being missed in the checking exercise. Further, it had been explained that YJ10 LVM had been discovered not to be using Adblue *before the stop* but that it was on a journey to Scotland and beyond "the point of no return" and therefore was not recalled. Mr Logan described the customer's desire for the product to be delivered and the cost and inconvenience of not doing so, as leading him to take "the lesser of 3 evils". The vehicle was though stopped by DVSA on its return journey via the M6 at Carlisle. There was an acceptance by the operator that the TM's judgement in not recalling it immediately was a very poor one, where business interest was placed ahead of compliance with licence expectations. The VE recorded that he was "very disappointed" by Steven Logan.
20. The VE had been invited to peruse the operator's documentation on the morning of the Public Inquiry. In his evidence however, he further noted on checking that the system said to have been introduced by the operator for drivers to monitor AdBlue usage that it was not being fully complied with by all drivers.
21. He expressed concerns about the operator's accumulation of multiple prohibitions, pointing out that since his second visit in February 2018, a further 9 prohibitions had been issued. In fact, the formal record showed that in the period 23 April 2018 to 3 September 2018, some 11 more prohibitions were issued, 6 were immediate (one of them "S" marked) and 5 were delayed.

22. As at the date of the Public Inquiry, 20 prohibitions were recorded, producing prohibition rates of 44% and 30% for vehicles and trailers respectively, since the grant of the licence 20 months before. Of serious concern was that as many as 4 of the 20 were “S” marked, indicating serious concerns about the operator’s systems and procedures for keeping vehicles fit and serviceable.
23. He shared the concern that the root cause of the matter was the poor systems in place and that they were not properly policed.
24. I had gone on to ask VE Rimmer about his review of the maintenance records provided by the operator to him on the morning of the Public Inquiry. Those he had reviewed provided further cause for concern, as follows:

YJ12 KKT – No sheets recording driver walk-round checks were produced for the period June to October 2018, implying it had not been in use. The vehicle had been submitted for preventive maintenance inspection on 5 occasions, including that period. Odometer readings showed it to be in use. On some maintenance sheets, the declaration was unsigned and on others, no brake check was endorsed. One of them carried an endorsement that the check was carried out on 27 December 2018 [despite the hearing date being in November 2018];

DK61 UGG – He noted that this vehicle received a prohibition on 23rd April 2018 but no preventive maintenance records were produced for it;

YJ12 KLC – He noted this vehicle listed on the licence from 3 April 2018 until 18 June 2018. It had been prohibited on 4 January 2018, 1 May 2018 and 21 May 2018 (at roadside). The record shows that the 1 May 2018 prohibition was still in force on 21 May 2018, even though more than 10 days had passed since the delayed prohibition took effect. The operator claimed a lack of awareness of the initial prohibition;

YJ61 ELH – He again noted that no sheets recording driver walk-round checks were produced for June 2018, during which month a prohibition had been issued, but only for November 2018 when the vehicle had come back onto the licence.

25. Pressed by Mr Newman about recent performance, the VE accepted that since 23 June 2018, only a single prohibition had been issued, despite five encounters with DVSA. VE Rimmer acknowledged that “definite improvement” was shown, since his visits but the proof would be in the prohibition rate in the longer term.

The inquiries made by TE Rowlands:

26. TE Rowlands had begun his investigations on 30 January 2018, when concerns about drivers’ hour’s offences were referred to him. At that stage he recorded a mostly satisfactory TEOR (Traffic Examiner Operator Report), having spoken to Steven Logan.
27. The particular inquiry had been triggered by an encounter with Driver Coulter, who had been stopped on 1 September 2017, but who was then found using the driver card of another person, that is Stephen John Evans. Mr Evans was at that time a

director of Viviago Ltd. TM Logan had been interviewed under caution. He said he had been told by the driver concerned that he had removed his card whilst taking a 45-minute break and on return to the vehicle, had reinserted the card of Mr Evans, which he saw on the dashboard, believing it to be his own. It was of course common ground that a driver's card should never be withdrawn during a break in the fashion described.

28. Another vehicle, YJ12 KKP, had been stopped on 29 November 2017 but when Driver Whelan's driver card was interrogated, a series of infringements between 3 November and that day were detected. These included daily driving limit offences, daily rest offences and failures to take a qualifying break (or breaks) after 4 ½ hours driving. Driver Whelan was not in possession of his CPC card and periods of driving immediately before and after his use of the vehicle on 3 November 2017 were detected. Those periods of driving were carried out without a driver card inserted in the tachograph slot. The TM had confirmed that Driver Whelan had been the only driver of that vehicle on that shift.

29. Following an encounter with vehicle YJ12 KLC driven by Driver Nistor on 1 May 2018, further offences were detected, during which the driver was failing to insert his driver card, or removing it to conceal periods of driving or duty. The driver was reported for prosecution for 14 offences including 8 counts of making false driver records.

30. In her evidence, director, Samantha Hughes:

- Reminded me that Stephen Evans was dismissed immediately following the Public Inquiry held on 7 November 2017. It was however a recurrent theme of her evidence that the impact of his involvement had blighted the business for a lengthy time thereafter;
- Accepted the company had "struggled" with paperwork in the period from December 2017 to mid-February 2018, when Mr Logan had been absent ill and the period of grace was in place. She accepted that matters arising during that time were down to her "bad management" as she was the cover for the absent TM;
- Denied any prior knowledge of the unlawful AdBlue devices fitted, which she suspected were fitted in Stephen Evans' time;
- Accepted that false assurances were given to VE Rimmer, when he first visited that all vehicles had been checked for AdBlue devices, when this transpired not to be the case;
- Described her close contact with drivers as being her central responsibility - "24 hours a day";
- Exemplified drivers, whose employment had been terminated, when their wrongdoings became clear. She identified drivers as being a particular weak link in the business;
- Pressed to explain how such significant volumes of prohibitions could be issued, she agreed it "was not acceptable at all". She was "horrified" but described only carrying out further induction training for drivers to correct the position. Whilst

she claimed “better systems were now in place”, I struggled to obtain any realistic description of what they were;

- Asked about the outcomes in the audit report, she acknowledged that she had believed “things were going better than the audit suggested”;
- Pressed for her analysis why, in terms of prohibitions suffered, things got worse *after* the audit, she could not offer any coherent explanation;
- Maintained that the significant slowing of prohibitions since June 2018 pointed to matters being addressed: she claimed encounters in that period not leading to action were effectively a “green light” for the operator. There had been a single delayed prohibition in September 2018 and a failed MOT in October 2018.

31. In his evidence Steven Logan:

- Accepted he should have redone the checks for other AdBlue devices and for evidence of the ongoing usage of AdBlue, once it had become clear, after the earlier Public Inquiry that Stephen Evans was not of good repute;
- Claimed ignorance of the deployment of AdBlue devices, and of any knowledge of what they were at the time;
- Accepted that drivers were not consistently completing the sheets monitoring AdBlue usage and that he would need to address the matter;
- Described the audit as “quite bad”, “lacking in many places” and that “it had been sat for 6 weeks with no-one really looking at it”. He had though drawn up the plan to address the audit recommendations;
- Offered that whilst he was absent from the business, drivers had been allowed to initiate changes to systems e.g. to the defect sheets and the time sheets, moving from daily provision to weekly arrangements and to using an ADR format, even though no ADR work was carried out (carriage of dangerous goods). Some of his required processes had ceased to apply. He described several vehicles as in need of “overhauling”, as they had got into such bad condition, whilst he was away;
- Admitted he had not appreciated that any vehicles presented for MOT had failed their tests, because he had not been monitoring the position on OCRS;
- Accepted criticism that action taken to deal with the poorly performing maintenance contractor had not been dealt with quickly enough: it remained outstanding at the time of the hearing;
- Admitted that he had allowed Driver Whelan to continue his employment driving company vehicles, even after he had been charged with an excess alcohol offence committed in one of company’s large goods vehicle, since he was “only just over the limit”;
- Nevertheless, he labelled Driver Whelan as “a disgrace of a driver” with so many infringements were that there were indicative fixed penalties up to £3500. Yet he kept him on in part because “(he) liked him”. He was unable to account for that

driver claiming that he was working for Stephen Evans, when he had left straightaway after the Public Inquiry, where he had been discredited;

- Pointed out that Driver Nistor was taken on whilst he was absent from work but that his “defects” (infringements) were “two inches deep” but he had stopped using him, as he had been “a nightmare to the company throughout”. He did describe an incident where Driver Nistor had been told not to take a trailer but through laziness, took it anyway;
- Claimed that his return to the business in May 2018 had been the catalyst for the more recent improvement. His plan was to change the maintenance provider since “he was not doing a very good job” and could not offer the roller brake tests that had been promised;
- Evidenced a level of ignorance in his expressed opinion that shunting operations in the yard by drivers would neither constitute driving nor other work that needed to be recorded for the purpose of drivers’ hours compliance, when this was not the case.

Submissions

32. In his closing submissions, Mr Newman invited me to accept the explanations given about the fitting of the AdBlue devices, accepting a degree of incompetence on the part of his clients but arguing that no attempt to gain competitive advantage underlay what had happened.

33. There was acceptance there had been serious drivers’ hours’ infringements and that the pulling of driver cards was unacceptable but he pointed to the positive outcomes of the TEORs in both January and November 2018.

34. His central submissions to me were twofold:

First that the circumstances, which had led to the Public Inquiry needed to be viewed in the context of the malign impact of Stephen Evans on the business and the health circumstances and absences of TM Logan;

Secondly, he invited acceptance that the more positive period since June 2018 demonstrated change that might lead me to conclude that the operator could be trusted going forward.

35. Assurance was offered through a further FTA audit that was to be undertaken, a refresher course for the TM, who was now fully fit and back in the business and that the “bad” drivers had been removed from employment, with only five drivers now in post.

36. Whilst Mr Newman acknowledged “quite significant negatives”, he saw them as outweighed by “lots of positives”.

Findings, consideration and conclusions

37. I found the written and oral evidence of VE Rimmer and TE Rowlands to be balanced and credible and accepted it.
38. I found the evidence of Samantha Hughes to be considerably self-serving, tending to offer excuses and a passing of the blame to others. It was superficial in nature, in the sense that her evidence gave an impression of her playing a significant role in the business but without substance for that claim being properly evidenced.
39. I accepted the evidence of TM Steven Logan that he had suffered illness necessitating both a period away from the business and even after his return to it, further time off. I found his evidence to be credible but on occasion demonstrating a lack of up to date knowledge and a poor exercise of judgement, especially where drivers were concerned.
40. As was clear from the findings in my earlier decision, this operator culpably ignored due diligence in the earlier appointment of Stephen Evans as a director of the company. Whilst his removal from the business and his barring out from any further involvement had apparently been achieved, I find that the other steps, which any prudent operator might have taken, in the aftermath of his leaving, were not taken. The last Public Inquiry ought to have led to positive action to check arrangements put in place and any steps previously taken by him. In these circumstances, I am not prepared to accept as material that the excuse offered that the subsequent adverse events after his departure in July 2017 are capable of being explained away, substantially by reference to his prior role.
41. I have gone on to consider with care the extent to which the absence of the TM is relevant to the findings I am required to make about this operator's repute, and the trust and confidence that I might have in the director, Samantha Hughes. It is of course the case that periods of grace may be appropriate in many businesses, when a TM is not in post for whatever reason. During such periods, when there is no professional competence, other persons are required to step-up and manage arrangements. Regrettably, nothing that I heard in the inquiry led me to conclude that Ms Hughes had realised that any additional steps were needed by her and that she would need to be much more hands-on. I find that is the case both during the period when, first Mr Marsh attempted to take on responsibilities, and again during the later period when TM Logan was absent, in the period after his return. I conclude that his illness cannot be permitted by me to disguise the underlying position that she has failed to step-up to her responsibilities in that extended period. If, as she opines, the drivers were the weak link in the business, it was always likely to be the case that in the absence of a TM that they would require ever closer management. The reported changes brought about in his absence by the drivers in undermining the processes and procedures than in place, being a prime example of the impact of her failing to act, even when she said she had the closest contact with them.
42. I made the following specific findings:
- a) The operator was given a formal and final warning in December 2017 but compliance has deteriorated since then. My decision then recorded prohibition rates which have worsened in both volume and seriousness and MOT pass rates that have deteriorated, when I had expected they would improve;
 - b) The operator has accrued multiple prohibitions, the numbers of which are not repeated here. The S-markings indicating significant deficiencies in maintenance systems, in respect of safety critical parts are a serious concern;

- c) The audit report paints a very disappointing picture of serious shortcomings relevant to road safety requiring urgent attention, when I had expected to be provided with reassurance by the audit outcome. I find that the confidence I then had in the operator to have been misplaced;
- d) It is more likely than not that failures and shortcomings in the maintenance arrangements led to, or contributed in a significant fashion to the high rate of prohibitions incurred. This position being compounded by the operator's failure to address this issue despite appreciating that it ought to change contractor;
- e) Whilst on the evidence heard, I accept that neither the director nor the TM knew of the fitment of AdBlue cheat devices, the operator's response in confirming that it had checked for further devices, when this was not the case, was a reckless one, which had the effect of misleading the DVSA;
- f) I find the decision of the TM not to recall immediately the second vehicle, when it was discovered to have a device fitted to it, to represent a clear example of the operator placing its business interest ahead of achievement of compliance under the licence. This is conduct unbecoming of an operator and prejudices the principles of fair competition in the industry;
- g) I find the assurances given to the VE that a proper monitoring arrangement for the management of future AdBlue usage were not fully implemented;
- h) I find that current record keeping, as evidenced by VE Rimmer's findings on review of documents at the hearing to be unsatisfactory;
- i) I find that over a short period, several of the operator's drivers showed significant levels of non-compliance with the expectations of them as professional drivers. Whilst I do not find that the operator or the TM encouraged or condoned such misconduct, I do find that the evidence supports a finding that the failure (of both the TM and Ms Hughes) to manage drivers robustly and decisively is more likely than not to have contributed to that state of affairs;
- j) This operator's compliance risk score (OCRS) is assessed as Red/Red for roadworthiness and for traffic matters.

43. I find that there are grounds for taking action against this licence under Section 26 (1) (b), (c) (ii) and (iii), (ca), (e), (f) and (h) of the Act.

44. Turning to Section 27 of the Act, and in particular whether the operator and the TM retain their good repute, I find that on any analysis, this is a bad case. The seriousness of the shortcomings set out and the fact that they range across many areas of activity – a fleet with AdBlue cheat devices fitted to two of its vehicles, the inadequate maintenance arrangements, serious prohibitions, administration shortcomings, a failure to give accurate information to the DVSA, and the commission of offences by drivers – is seriously concerning. A real threat to road safety is reflected in the issue of prohibitions and deployment of a vehicle with a cheat device fitted. Whilst it is the case that many operators may go through periods when the personal circumstances of senior staff affects their business, it is the expectation of any enterprise that it then brings into operation suitable contingency plans. In this fashion, the business may remain compliant and critical expectations are met. It is manifestly the case that such arrangements did not achieve that here. I am not satisfied that the TM role was effectively covered.

45. I have addressed myself to the specific contention that positive change has been effected and that I might already be satisfied that there will be compliance in the future. Whilst it might be hard to criticise me for being cautious when considering such an argument, since there is a mirroring of the position where I was invited to have similar confidence when I last encountered the operator at Public Inquiry, there

are other reasons to take into account. First, the record since June 2018 is far from unblemished, the current records produced were themselves a cause of concern and even though a change of maintenance contractor was acknowledged as a necessary step, it had not been taken. I would add that looking at matters in the round, that *the sheer range of failures* highlighted in this case are such as to require a much longer period of apparent compliance to pass before a contention that compliance had become more likely than not, could succeed.

46. In reaching a conclusion, I have considered the Senior Traffic Commissioner's Statutory Document No.10: The principles of decision-making and the concept of proportionality and, in particular, Annex 3.

47. The Guidance Document provides starting points for consideration by Traffic Commissioners in considering regulatory action. Whilst each case must be dealt with on its own merits, action taken including licence revocation and disqualification from holding or obtaining operator's licences is reserved for categories of case falling into the definition as warranting "severe" action being taken.

48. Descriptions of conduct including the following features are described as having a starting point of the delivery of "severe" action:

"Deliberate or reckless acts that have compromised road safety and gave the operator a clear commercial advantage and/or permitted driver offending and/or any attempt by the operator to conceal offences or failings."

49. I have weighed together the positive and negative features of what I heard.

50. I struggle to list positive features, in the favour of the operator from the non-exhaustive list in Annex 3.

51. I do however find the undertakings re financial standing and the role of Stephen Evans attached at the last hearing were met. I take account of the VE's evidence of "definite improvement" in the recent period, albeit that he was guarded in that assessment because the proof would only be known in the longer term. His assessment of current records was far from a wholly positive one.

52. I note the supplemental report from TE Rowlands raised no new issues of concern.

53. I acknowledge the sincerity of the director's desire to continue to operate the business and provide employment for its staff. Assurances for the future are given but I take the view that they represent too little, too late.

54. The following negative features from the indicative list are relevant to my consideration:

- a. Deliberate and/or reckless act/s by operator and/or drivers that led to undue risk to road safety or unfair commercial advantage
- b. Substantial number of previous prohibitions, or fixed penalty notices or convictions and/or failure to notify to the traffic commissioner within 28 days
- c. Ineffective management control and insufficient or no systems and procedures in place to prevent operator licence compliance failings
- d. Insufficient and/or ineffective changes made to ensure future compliance

- e. Road safety critical defects on any vehicle or trailer in service or any “S” marked prohibition or prohibitions issued at MOT
- f. High prohibition rate.

55. Having weighed these matters together, I find that the negatives set out far outweigh the positives. My confidence in this operator to ensure compliance and uphold the expectations of a licence holder has been seriously undermined: I do not trust this operator to achieve licence compliance.

56. In reaching conclusions as to whether the repute of the operator has been lost, and having weighed the factors, I ask myself the so-called Priority Freight question (2009/225), “How likely it is that this operator will in future operate the licence in compliance with the operator licensing regime?” I find that I cannot answer that question positively.

57. The failings are widespread and the legitimate industry would rightly be concerned if in the circumstances outlined, an operator were able to retain its repute in such a case as this, where trust in an operator had been lost.

58. Taking all of these matters into account including the prohibitions issued, when I ask myself the supplementary question “Whether it is right for this operator to be put out of the business in which it is operated?” I conclude without doubt that the answer to that must be yes. The needs of road safety and fair competition in the business are such that this is the only proportionate decision that I may reach. This is not a case in which a direction falling short of revocation i.e. suspension of the licence or an effective curtailment of it would be appropriate in any fashion. It is acknowledged that the impact of revocation is the ending of the business because of the nature of the work carried out.

59. Turning to whether the operator continues to satisfy the requirements for the holder of a Standard National Licence set out in section 14ZA (2) of the Act, and whether it has this Transport Manager is of good repute.

60. I do conclude by a narrow margin that Steven Logan retains his repute. His absence at critical times and the lack of support given to his role when he was not present provides the context for this consideration. The findings made about this operator do not reflect well on him, since adverse findings include when he was present and active, as well as when he was not. Of course, though, he cannot be blamed for what happened when he was not there, and I recognise that when he returned to the role the neglect in the interregnum was such that his role became more difficult. That is not to say that my findings do not also point to some poor judgement and decision making on his part, and some gaps in his knowledge. I am however satisfied that these may be addressed in the first instance through a refresher training course of his TM CPC qualification before, or if, he offers himself as a TM on any other licence.

Decision:

61. I record that in the circumstances the repute of the operator has been lost.

62. I direct that the licence of Viviago Ltd be revoked with effect from 23.45 hours on Monday 11 March 2019 in accordance with section 27 (1) (a) of the Act – lack of

good repute. For the avoidance of doubt that revocation is also directed on the findings already made under Section 26 of the Act above. This short delay before revocation is designed to facilitate an orderly closedown of the business.

63. I am further minded to exercise my power to disqualify Viviago Ltd and Samantha Hughes, its director from holding or obtaining an operator's licence for a period. Such are my findings that a relatively short period out of the licensed regime is appropriate. I set down the period of disqualification for both at 18 months. I 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 of course a first appearance and some of the concerns here are significant, although they represent negligent failures rather than deliberate acts.

64. I record that in the circumstances the repute of its Transport Manager Steven Logan is not lost but is tarnished by the findings made.

65. A formal warning as to his future conduct is recorded.

66. A personal undertaking is set down that in the event that Steven Logan should offer himself as TM on any licence in the future, he will have completed a minimum two-day TM Refresher course from a training provider of repute and produced the certificate of his attendance thereon.



Simon Evans
Traffic Commissioner
for the North West of England
11 February 2019