



**DECISIONS OF THE TRAFFIC COMMISSIONER
FOR WALES**

Paul Michael Squires – OG1089610

&

Transport Manager – Colin Parmenter

Goods Vehicles (Licensing of Operators) Act 1995 (“the Act”)

**Decisions made in respect of the operator’s licence held by Paul Michael Squires
OG1089610**

1. Adverse findings are made under sections 26(1)(b); 26(1) (i) and (ii); 26 (1) (c) (iii); 26 (1) (e); and, 26 (1) (f) of the Act.
2. The operator no longer satisfies the requirement to have sufficient financial standing under sections 13A(2) and 27(1)(a) of the Act.
3. The operator no longer satisfies the requirement to be of good repute under sections 13A(2) and 27(1)(a) of the Act.
4. The operator no longer satisfies the requirement to be professionally competent under sections 13A(2) and 27(1)(a) of the Act.
5. The operator’s licence is revoked forthwith.
6. Paul Michael Squires is disqualified from holding or applying for an operator’s licence in any traffic area for a period of three years.
7. Any future application involving Paul Michael Squires’s father, Geoffrey Michael Squires is to be referred to a traffic commissioner in view of a previous order of disqualification involving Geoffrey Michael Squires and his links with this licence. The file for this public

inquiry is to be kept for no less than 15 years, longer if the traffic commissioners at that time have a longer data retention standard.

Decisions made in respect of Transport Manager Colin Parmenter

8. Colin Parmenter has lost his repute as a transport manager. He is disqualified from holding or applying for any transport manager position within the EU until 30 October 2019.

Decisions made in respect of vocational driver Paul Squires, SQUIR 604066 *****

9. Paul Squires is unfit to hold a vocational licence and his vocational entitlements are revoked with effect from 7 January 2019. He is disqualified from holding a vocational entitlement until 1st May 2020.

Background

10. Paul Michael Squires (“ Paul Squires”) was granted a sole trader standard national goods vehicle operator’s licence at a public inquiry in December 2009 and at the time of the latest public inquiry had authority for two vehicles and three trailers. His business involved buying hay, straw and animal feed bringing it back onto his own land before selling it on, the operating centre was in Trefenter, Aberystwyth. A second public inquiry was held in 2015 resulting in a formal warning that any future abuse would result in serious sanction, probably revocation, detailed undertakings were given and recorded on the licence as result of both public inquiries. Another investigation conducted in 2018 led to this latest public inquiry being convened. Paul Squires was also called to a conjoined driver conduct hearing as a result of his driving HGVs and apparently falsifying records.

11. H Matthews & Son Ltd OG1147460 was called to the same hearing as a result of concerns raised by the DVSA, it was apparent that Paul Squires had been an occasional driver for that operator and falsified records. The limited company was granted a standard national goods vehicle operator’s licence in 2016 and at the date of the public inquiry had authority for two vehicles and two trailers, with a single vehicle in possession. The transport manager was Benjamin Gareth Owen.

Public Inquiry

12. In attendance at the conjoined driver conduct hearing and public inquiry on 30 October 2018 were:

- Colin Parmenter, former transport manager for Paul Squires;
- Herbert Matthews, director of H Matthews & Son Ltd;
- Jeffrey Matthews, director of H Matthews & Son Ltd;
- Benjamin Gareth Owen, transport manager for H Matthews & Son Ltd;
- Aled Owen, solicitor of Harrison Clark Rickerbys, representing H Matthews & Son Ltd and its transport manager;
- TE Nia Lloyd Daniel; and,
- VE Lee Rees.

13. No one attended for or on behalf of Paul Squires, although I received a letter from David Williams of Redkite solicitors advising, inter alia, that his client would not be attending and sought to surrender the operator’s licence, with an acceptance that he would lose his

vocational entitlement for a period of time. I did not accept the surrender and proceeded to consider evidence with view to making determinations on their merits.

14. At the conclusion of the hearing I indicated that I would be producing a written decision in respect of the operator's licence held by Paul Squires and his vocational driving entitlement. Former transport manager Colin Parmenter was told that I was minded to make a finding that he lost his repute as a transport manager and that I was likely to disqualify him for a period of a year.

15. I gave an oral decision in respect of H Matthews & Son Ltd, it was clear that this was a respected local family business which, despite some failings, sought to be compliant. The outcome of the hearing for H Matthews & Son Ltd was that authorisation on its operator licence was curtailed from two vehicles to one vehicle for the period until 1 January 2019. Transport manager Benjamin Gareth Owen was given a warning but he kept his repute.

Evidence

16. Before preparing this written decision, I have reviewed the following:

- Written public inquiry brief for Paul Michael Squires OG1089610 and previous transport manager Colin Parmenter;
- Contemporaneous handwritten notes from the hearing;
- Evidence given to me during the hearing;
- South Bucks District Council and another v Porter (FC) (2004) UKHL 33 in relation to written decisions generally; and,
- Aside from those quoted below, various authorities in relation to the approach to regulation, fitness, proportionality, and the burden of proof. – Thomas Muir (Haulage) Ltd v Secretary of State for the Environment, Transport and Regions (1999) SLT 666; Crompton trading as David Crompton Haulage v Department of Transport, North Western Area (2003) EWCA Civ 64; Muck It Ltd and others v Secretary of State for Transport (2005) EWCA Civ 1124; 2009/225 Priority Freight Ltd and Paul Williams; Fenlon 2006/277; and, 2002/217 Bryan Haulage (No. 2).
- Various authorities that are specific to vocational driving licences: B435/10 Bruce Kirkpatrick and a Deputy TC and the Secretary of State; B429/10 Martin Smith v Secretary of State for Transport and a deputy traffic commissioner; and, Meredith & Others v Traffic Commissioner for the Western Traffic Area (2009) EWHC 2975 (Admin).

Written evidence on behalf of Paul Squires

17. Paul Squires conceded that the findings of DVSA officers Rees and Daniel were accurate, subject to his not accepting that he was a "front" for his father who had his licence revoked by me some years ago. It was claimed that his father's trading name was kept when he took over the business together with invoices. It was suggested that some documents were stored at Paul Squires's father's house for convenience only and for safekeeping during building works to Paul Squires's home.

18. It was put that Paul Squires regretted that he gave DVSA officers the impression that he was volatile and said that if he did so he apologised unreservedly.

19. Referring to letters submitted by Colin Parmenter and copied to the operator, the accuracy of Colin Parmenter's allegations were not accepted, it being suggested that it was

an attempt to pass blame in an attempt to avoid responsibility for his shortcomings as a transport manager.

20. The letter from solicitors confirmed that Paul Squires would be pleading guilty to the charges that he faced including ones relating to making false records.

21. On behalf of Paul Squires it was put to me that he had only worked in the haulage industry and, living on a smallholding, he was the main family breadwinner. It was pointed out that his prospects of new employment were minimal (potentially relevant in respect of the operator's licence, but not relevant in considering Paul Squires's fitness to hold a vocational licence, see Meredith, above).

DVSA evidence

22. A formal letter requiring production of documentation was sent to Paul Squires in April 2018, this resulted in the DVSA being contacted by Tacho Man Ltd (a tachograph analysis consultancy) explaining that as result of Paul Squires being on leave, they had been asked by him to supply the required digital data. During the same month a production letter was sent to another operator in the same area and, coincidentally, it transpired that Paul Squires drove for that operator too.

23. It transpired that Tacho Man Ltd was working for both operators and as a result data for both were supplied the DVSA. At a glance it showed that:

- no digital data had been produced for vehicle PX06CLN.
- the insurance policy holder for both vehicles was Geoffrey Michael Squires (the father of Paul Squires and an individual who had been disqualified by me).
- Colin Parmenter was resigning as transport manager.

24. Digital data was received by the DVSA this showed that:

- there was no data prior to 24/02/2018 for vehicle PX06CLN.
- The company card for Paul Squires's licence was first inserted on 24/04/2018, this was after receipt of the production letter.
- The download period for Paul Squires's driver card had been exceeded between 19/01/18 and 09/03/18.

25. Analysis of tachographs in early May 2018 showed a number of offences in relation to Paul Squires's brother who was also a driver (he was not called before me as he did not hold a vocational licence and utilised his grandfather rights). Examination of analogue charts also showed that the kilometres declared followed on from the previous day's chart did not match on numerous occasions.

26. Subsequently a report was run for all instances of driving without a digital driver card in the recording equipment in PX06CLN. As Paul Squires was also a driver for H Matthews & Son Ltd further investigations followed.

27. Several pages of detailed description and analysis of Paul Squires's driving was described in TE Daniel's written report, it being clear that numerous drivers hours offences had been committed including falsifications by removing his driver card.

28. During the investigation it also became apparent that:

- Paul Squires entitlement to drive vehicles of category C, C1, C1E, and CE had expired in May 2016 and he had been driving vehicles of these categories until it was renewed on 03/05/2018.

- There was no system for downloading the digital data from the vehicle units or driver card prior to the involvement of Tacho Man Ltd and that this was only sought by Paul Squires after receipt of the production letter.
- No record of other work was produced.
- The analysis produced was insufficient.

29. An unannounced visit was carried out by TE Daniel together with VE Rees on 26/06/2018 however no one was present, an appointment was made with Paul Squires for a visit and interview on 03/07/2018. During the telephone call with Paul Squires arranging the interview it was explained that the examiners would need to go through the documents received and ask questions in relation to driving without a card, failing to produce digital data and the fact that there was no transport manager in post. It was also explained that the issues relating to driving about a digital card would likely to be sent to the DVSA prosecution team and so he was told that he might wish to consider obtaining legal advice. He was also told that VE Rees would need to look at vehicles and trailers and associated paperwork.

30. At this point Paul Squires's temperament was described as having changed with the examiner making a note of what he said: *"I've had people like you make appointments before me and not turn up, am telling you that I won't take any "shit" off you and if you're awkward and shitty with me I will escort you of the premises."*

31. On 03/07/2018 TE Daniel and VE Rees visited the operator's father's premises, also present were Paul Squires, his brother Nigel, Andrew Edwards of Tacho Man Ltd and John Knight the maintenance provider. On arrival Paul Squires apologised for his tone on the telephone.

32. TE Daniel commenced downloading data from PX06CLN as well as Paul Squires's digital driver card, it was explained again to him that she needed to question him and it was his choice as to whether or not he was willing to be interviewed.

33. At the public inquiry on 30 October 2018 I asked TE Daniel about Paul Squires's demeanour. She told me that Paul Squires's demeanour was okay if he heard something he liked but he would "flip" if he heard something that he didn't like and leave the room.

34. Paul Squires conceded that he had driven the vehicles in question without a digital driver card but claimed that it was not done to gain anything. Again he declined to be interviewed and left the room.

35. Andrew Edwards of Tacho Man Ltd was representing Paul Squires during the DVSA investigation and at this point it was explained to him that there were over 100 questions that TE Daniel required answers to. They both felt that Paul Squires would not sit and let her ask questions without becoming confrontational, as a result they agreed to shorten the interview with Paul Squires and merely cover offences relating to his driving without a driver card. Andrew Edwards then left the room to talk to Paul Squires and explain the conversation that he just had with the examiner.

36. A shortened interview was conducted as set out in the above paragraph, however due to Paul Squires's volatile nature a formal Traffic Examiner Operator Report form and full assessment of the systems in place could not be completed. Again I pressed TE Daniel on this and she explained that there was no way that Paul Squires was going to answer the questions that she needed to put.

37. On my asking VE Rees about Paul Squires, he commented that if another appointment was made or if Paul Squires spotted something that he regarded as incorrect it was like a switch; he would become aggressive. If a defect was found that he didn't agree with he would be intimidating.

38. As the examiners were leaving the operating centre a Thomas Orton arrived, it being explained that he would be the new transport manager (in the event this did not happen).

39. A list of questions was sent to Colin Parmenter, the nominated transport manager during the period subject to motion investigation. A prompt response was not received however he did reply later in August 2018 when he apologised explaining that he had been out of the country and asked that questions be sent via email so that he could reply to them. TE Daniel sent a list of questions, full details of them and of the responses are set out in the written evidence.

40. Key features of responses from Colin Parmenter were;

- There was no written contract with Paul Squires.
- Colin Parmenter said he resigned from his position as transport manager as the business was facing another public inquiry and that he had told Paul Squires in 2015 that he was not prepared to go on to another public inquiry representing the business as he could not give reasons to defend the operator's failures.
- Drivers were not issued with written instructions in relation to their roles, responsibilities and conduct.
- The transport manager only advised if offences were discovered due to the business being a small one with the only drivers being the sons of the owner.
- There was an element of trust in relation to checking driving licences and digital tachograph cards and DVLA printouts were only taken recently.
- Transport manager Colin Parmenter failed to explain the procedure within the business for analysing digital data prior to the involvement of Tacho Man Ltd in April 2018.
- Colin Parmenter admitted offences were repeated but as it was a small family business he considered that he was not best placed to deal with them.
- Colin Parmenter could not provide a reason for the lack of digital data being produced prior to 24/02/2018 stating that Paul Squires was responsible.
- Colin Parmenter was unable to explain why the company card was in the name G M Squires & Sons, or why the card was not inserted until 24/04/2018.
- On being asked to explain offences relating to driving without a driver card Colin Parmenter responded "*it's clearly something that Paul Squires needs to answer and he is shocked and disappointed to discover this*".
- Colin Parmenter was not aware of the instances of driving about a digital card claiming that it would have been analysed by Tacho Man Ltd.
- Colin Parmenter said he was not fully aware of the number of hours Paul Squires worked for H Matthews & Son Ltd (although of course he should have been aware).
- Colin Parmenter referred the business as being G M Squires & Sons and that the drivers were Paul and Nigel Squires, the sons of Geoffrey Michael Squires.
- No explanation was offered by the transport manager for the apparent offences.
- Colin Parmenter claimed that he analysed the tachograph charts and that Nigel Squires took odometer readings from vehicles.
- In relation to the insurance certificate, Colin Parmenter explained that Geoffrey Michael Squires was still active in the company although he no longer drove he controlled the financial running of the operation, assisted by his wife (note this is

contradicted by the written assertions on behalf of Paul Squires sent prior to the public inquiry).

- Colin Parmenter was unaware of Paul Squires's entitlements expiring in 2016.

41. During his interview under caution Paul Squires claim that where the vehicle was moved without a driver card it would have been because of the fitter driving and working in the vehicle and shunting within the yard. Regarding his driving entitlements expiring, he claimed that he had not realised that they had expired.

42. At the end of the interview Paul Squires was asked if he wish to add or say anything he said: *"this was an honest mistake, and absolutely no advantage was gained by not renewing it. In relation to the offences of removing the driver card I would like to add that on some occasions when the card was removed it was down to pressure of work to get animal feed to my customers due to bad weather. Again this was a poor decision and I did not realise the seriousness of my actions."*

43. Amongst the numerous offences identified there were nine relating to false driver records.

44. TE Daniel confirmed that the insurance certificates for PX06CLN and for MX54JUH were not in the name of the operator but were in the name of Geoffrey Michael Squires, the father of Paul Squires.

45. During interview Paul Squires claimed that paperwork was not his strong point and that was why some documents were kept at his father's house. TE Daniel commented that Geoffrey Michael Squires had been the holder of an operator's licence until it was revoked in December 2009, Paul Squires's licence was granted at the same proceedings with it being claimed that it was entirely separate and would not be a "front" for his father. Attention was also drawn to the fact that this had been in that position for a number of years and TE Daniel referred to the business as G M Squires and Sons, additionally it appeared that Geoffrey Michael Squires was still active.

46. An undertaking recorded on the licence as result of the 2015 hearing referred to the transport manager producing monthly reports setting out infringements together were steps taken to ensure future compliance. There was no evidence that this undertaking had been complied with.

47. It was also pointed out that the transport manager openly admitted in his resignation letter to me (as TC) that he had not been available for a period of time.

48. VE Rees's evidence was of an operator that had had no encounters during the last two years, but there were very real problems identified during the investigation.

49. It was confirmed by VE Rees that he found Paul Squires became confrontational when issues were explained to him following a fleet inspection of the vehicles. VE Rees explained in detail how he had attempted to be as helpful to the operator as possible on issuing a prohibition, waiting on site until a replacement tyre could be found so that he could issue a variation. Unfortunately Paul Squires was becoming agitated and so VE Rees asked him if he could take the PMI sheets driver defect books back to the DVSA office instead of analysing them at the operator's premises; this was agreed.

50. A revisit was organised for 12 July 2018 when extensive advice and guidance was given. Failures identified included the following:

- there was no transport manager in place since April 2018.
- There was no relevant training or experience evident on the day of the visit due to the lack of a transport manager.
- Incomplete PMI sheets.
- Of 20 PMI sheets inspected, there were no individual measured brake performance tests between annual MOTs.
- There was no evidence of a forward planner.
- There were no quality or proactive management systems in place for the PMI sheets, the inspection frequencies or driver defect reporting systems.
- No evidence was seen of the maintenance contract on the day of the visit to the operator.
- A high MOT failure rate, plus a number of items being identified as failures in the last two years.
- Prohibitions issued on the fleet inspection.

51. During her oral evidence TE Daniel confirmed that Paul Squires had been prosecuted in 2014 for a number of offences relating to drivers hours records, this had led to the earlier public inquiry where he had been warned that any future failure would probably result in loss of repute. She also commented that she felt somewhat intimidated by the operator. TE Daniel also commented that she always presumed that the operator's father was the owner of the business and felt that this was reinforced by the insurance certificates being in his father's name instead of the name of the operator himself. Some of the records were also kept at Paul Squires's father's house.

Evidence of Colin Parmenter

52. Colin Parmenter produced both a detailed resignation letter and an explanation for failures prior to the public inquiry, they were copied to the operator.

53. During his oral evidence on answering questions from me Colin Parmenter commented that he felt that the operator's father and mother had a huge influence on the business. Paul Squires was restrained financially by his parents. Colin Parmenter went on to tell me that at the last public inquiry he had told Paul Squires that matters were unacceptable including MOT failures and that there should be pre-MOT inspections. He went on to explain that Paul Squires did not get money from the family for this to be conducted. Colin Parmenter felt that Paul Squires's mother was the person who issued cheques and was the person who paid and controlled bills. There were family conferences to determine what money was spent.

54. On my questioning Colin Parmenter about Paul Squires's attitude and his apparent intimidating nature, he commented that he agreed with the descriptions given by DVSA examiners. Colin Parmenter went on to confirm that at the previous public inquiry it took him 30 or 40 minutes to calm Paul Squires down and explain matters, the problem was Paul Squires's attitude.

55. Written evidence was produced by Colin Parmenter, although its voracity was questioned by those representing the operator, it was open in accepting the factual failures by the DVSA. He went on to tell me that he had not been party to any manipulation of the rules and regulations. Maintenance was arranged by the operator who was in control of all bookings.

56. A testimonial was received on behalf of Colin Parmenter who it transpires is involved in specialist driver training, it was also explained that he had attended a two-day refresher course in July 2018. It was apparent that Colin Parmenter was generally well thought of,

although the testimonial did not relate to his responsibilities as transport manager for Paul Squires.

Material considerations and findings of fact.

57. I have had regard to the decision of the House of Lords which reminds civil jurisdictions that, whilst the standard of proof in civil proceedings is always on the balance of probabilities, the more serious an issue or allegation the more cogent the evidence that is required, *In Re H and Others 1996 1 All ER*.

58. Paul Squires has accepted the accuracy of the factual evidence from the DVSA examiners, I also accept the DVSA evidence and adopt it as fact.

59. Assertions in correspondence from solicitors on behalf of Paul Squires were not capable of challenge due to his unwillingness to attend before me and answer questions. I attach very little weight to the assertions on behalf of Paul Squires. Where assertions from Paul Squires are contradicted by DVSA examiners or by his former transport manager Colin Parmenter, I prefer the evidence of DVSA examiners and that of Colin Parmenter.

60. I adopt as findings of fact not only the factual evidence from DVSA examiners, I also accept as accurate their comments in relation to Paul Squires and his intimidating nature. I note that this is also corroborated by the evidence of Colin Parmenter.

61. Insurance certificates are in the name not of the operator but in the name of his father. I find as fact that this is because father has always retained control of what has effectively been a family business. I do not accept the assertions in correspondence from solicitors on behalf of the operator suggesting that Paul Squires was not a “front” for his father.

62. I have sought to identify both positive and negative features in conducting a balancing exercise. The positive features are that this is a relatively small scale business and so the adverse effect on competitors will have been relatively minimal. I also note a lack of DVSA interaction with the operator since the last public inquiry, however this has been due to the fact that this operator is based in a part of Wales which historically has had relatively little DVSA presence (for the avoidance of doubt and in fairness to the DVSA, this appears to be changing). The few positive features are outweighed by the many and serious negative ones identified.

63. I do not accept that the operator did not gain financially as a result of his falsifying records. They go to the heart of road safety as the drivers’ hours rules are there to not only protect drivers of HGVs, they protect other drivers and the public at large. This operator’s failures and especially the falsifications have an adverse effect on other compliant operators in the locality. They will find it more difficult to attract work when operators and drivers such as Paul Squires choose to cheat.

64. In this case the intimidating nature of the operator/driver was such that DVSA examiners were reluctant to conduct a full interview due to his volatile nature. That is wholly unacceptable and traffic commissioners cannot tolerate such behaviours.

65. When I ask myself whether I trust this operator, I answer in the negative. I remind myself that operator licensing is based on trust and in *2012/034 Martin Joseph Formby t/a G & G Transport*; the Upper Tribunal said “*traffic commissioners must be able to trust those to whom they grant operator’s licences, to operate in compliance with the regulatory regime.*”

The public and other operators must also be able to trust operators to comply with the regulatory regime.”

66. Judge Brodrick, in the case of 2006/277 Fenlon said:

“It has been said on many occasions that trust is one of the foundation stones of operator licensing. Traffic Commissioners must be able to trust operators to comply with all the relevant laws, rules and regulations because it would be a physical and financial impossibility to police every aspect of the licensing system all day and every day. In addition operators must be able to trust other operators to observe the relevant laws, rules and regulations. If trust between operators breaks down and some operators believe that others are obtaining an unfair commercial advantage by ignoring laws, rules or regulations then standards will inevitably slip and the public will suffer.”

67. I also remind myself of comments from the Upper Tribunal at paragraph 19 of NT/2013/028 Arnold Transport and Sons Limited v DEONI:

“the impact of unfair competition is insidious in that it gradually and subtly undermines the confidence of compliant operators that their competitors will comply with the regulatory regime and thus compete fairly. What matters is the perception that other operators are competing unfairly not whether they are achieving any benefit as a result. Once rumours, of unfair competition spread, (or clear evidence of it become apparent), the assumption will be made that it must be advantageous because there would be no point in running the risks involved if it was not. It is also corrosive because once rumours of unfair competition (at the very least), begin to spread the perception that some operators are competing unfairly (whether or not they profit by doing so) has a damaging effect. It means that normally compliant operators will feel tempted to “cut corners” in relation to the regulatory regime in order to remain in business. Some may decide to resist that temptation but others are likely to succumb. The end result, if swift and effective steps are not taken to stamp out unfair competition, is that the operators who are most determined to remain compliant will be at greatest risk of being put out of business, even though they are the very operators who most deserve to remain in the industry. Trust, whether between operators and the traffic commissioner or between operators themselves, is all too easily destroyed. Rebuilding it, if that is even possible, is likely to be a long and slow process.”

68. In the case of 2007/459 KDL European Ltd the court said:

“We are satisfied of the need “to make an example of the operator so as to send a warning to the industry as a whole”. This is consistent with the approach by the five-judge Court of Session in the Thomas Muir case (see paragraph 2(xiii) above) where deterrence is expressly mentioned (“in particular for the purpose of deterring the operator or other persons from failing to carry out their responsibilities under the legislation”). This is not by way of punishment per se but, as Lord Cullen said, is “in order to assist in the achievement of the purpose of the legislation”. We answer the question posed in 2002/17 Bryan Haulage (No.2) “is the conduct such that the operator ought to be put out of business” in the affirmative. And we judge this at the date not only of the public inquiry but also of the appeal. This is a bad case and we hope that the message sent out will be clear to all.”

69. A Stay decision in the case of Highland Car Crushers Ltd made the following comments:

“Other operators, with knowledge of the case, might be tempted to look at the circumstances and say to themselves this operator appears to be getting away with it so why should we bother to incur the expenditure of time, trouble and money to run

a compliant operation? It only needs one or two operators to adopt this approach to lead to a greater risk that the operator licensing system, which contributes to road safety, will be fatally undermined.”

70. When considering the repute of Paul Squires as an operator I ask myself the Priority Freight question, I answer in the negative as I do not trust the operator. In any event no evidence of financial standing has been produced, nor is there a transport manager and there has not been a transport manager for several months before the public inquiry. I answer the Bryan Haulage question in the affirmative. My decision to revoke the licence is an obvious one.

71. Turning to the issue of disqualification under section 28 of the Act, whilst representations on behalf of Paul Squires ask that such an order not be made, I consider that it is appropriate that an order of disqualification be made in respect of Paul Squires. Assurances were made on the grant of the licence that it was not a front for his father, I have made a finding that it was indeed a front. A clear warning was set out at the previous public inquiry, but it not heeded and drivers' hours rules have continued to be broken, indeed there are now instances of deliberate falsifications. Another feature that in itself merits an order of disqualification is the fact that DVSA examiners felt intimidated by Paul Squires. Reflecting on the helpful guidance in statutory document number 10, The Principles Of Decision Making & The Concept Of Proportionality at paragraph 100, an order of disqualification for a period of three years is appropriate.

72. Turning to Colin Parmenter's repute as a transport manager, I accept that he has been open and honest with me and with DVSA examiners; indeed I reflect that he has been remarkably candid with me and with the DVSA, including comments which could be regarded as not helping himself. The legal requirement is for a transport manager to have continuous and effective management of transport. Colin Parmenter was away for several months without arrangements to ensure that everything was in order. Of even greater significance is the fact that his description of his role is of a wholly ineffective transport manager. I accept his description of his attempts to calm Paul Squires down at a previous public inquiry and I understand that it would be difficult for any independent person working for the Squires family where there was such wholesale disregard for basic rules. However he could and he should have resigned as transport manager a long time ago, well before April 2018. It may be that Colin Parmenter has technical skills, however the long list of bullet points above in relation to his transport manager role is damning.

73. Whilst I do not question Colin Parmenter's integrity, I make a finding that he loses his repute as a transport manager. Having made a finding of loss of repute I am required by law to make an order of disqualification. At the hearing Colin Parmenter was told that I was minded to make an order of disqualification for a period of one year. I consider a one-year period of disqualification to be proportionate, however in his case I also take into account the fact that I am writing this decision two months after the actual hearing date, hence the disqualification is effectively for one year from the public inquiry date.

Separate considerations including legislative provisions in relation to vocational driving licences.

74. The legislation in relation to driver conduct is not the same as applicable to operators of heavy goods vehicles.

75. Section 115 (1) of the Road Traffic Act 1988 (“the 1988 Act”) provides that a large goods vehicle or passenger-carrying vehicle driver's licence - (a) must be revoked if there

comes into existence, in relation to its holder, such circumstances relating to his conduct as may be prescribed; (b) must be revoked or suspended if his conduct is such to make him unfit to hold such a licence; and where the licence is suspended under paragraph (b) above it shall during the time of the suspension be of no effect.

76. Section 116 (1) of the 1988 Act provides that any question arising under section 115 (1) (b) of this Act as to whether a person is or is not, by reason of his conduct, fit to hold a large goods vehicle or passenger carrying vehicle driver's licence, as the case may be, may be referred by the Secretary of State to the traffic commissioner for the area in which the holder of the licence resides.

77. Section 116 (2) of the 1988 Act provides that where on any reference under sub-section (1) above, the traffic commissioner determines that the holder of the licence is not fit to hold a large goods vehicle or passenger carrying vehicle driver's licence, as the case may be, he shall also determine whether the conduct of the holder of the licence is such as to require revocation of his licence or only its suspension; and if the former, whether the holder of the licence should be disqualified under section 117 (2) (a) of this Act (and, if so, for what period) or under Section 117 (2) (b) of this Act.

78. Section 121 of the 1988 Act defines conduct as meaning (a) in relation to the applicant for or the holder of a large goods vehicle driver's licence, his conduct as a driver of a motor vehicle, and in (b) in relation to an applicant for or the holder of a passenger – carrying vehicle driver's licence, his conduct both as a driver of a motor vehicle and in any other respect relevant to his holding a passenger – carrying vehicle driver's licence.

79. In making my decision in relation to the vocational licence I have taken into consideration the Senior Traffic Commissioner's statutory guidance in relation to Driver Conduct and the case of Meredith. Essentially when considering what action to take, if any, the personal circumstances of the offender are not relevant in my jurisdiction save in very limited circumstances. However I must take into account the circumstances of the relevant offences. This is in line with relevant case law in relation to operator licensing. This is the approach I shall take with one proviso. It is regrettable that in the Meredith case Pitchford J was not referred to all the relevant case law – namely he was not referred to the case of Thomas Muir (Haulage) Limited [1999 SC86] heard by a full five judge Court of Sessions. The Court of Session acknowledged that on occasion it is appropriate for a decision to be handed down as a deterrent. The Upper Tribunal has spelt out its support for the Thomas Muir approach in its published digest, available on the internet. This is also made clear in the 2007 case of KDL European Ltd, referred above.

80. It would send entirely the wrong message to the wilful and unscrupulous driver that it will not materially affect his or her livelihood to commit offences and to falsify records. Whilst I accept that each case needs to be decided on its merits after a careful balancing exercise, this case is exceptionally serious. This driver is wholly unfit to hold a vocational licence.

81. My decision is to treat this case involving Paul Squires's vocational licence as one meriting strong action. This approach is consistent with the two leading Scottish cases which are judgements of the Sheriff Principal in B435/10 Bruce Kirkpatrick and B429/10 Martin Smith. Essentially the Sheriff Principal endorsed the need to take wider public considerations into account, including, *where appropriate*, deterrent and public interest needs. The Senior Traffic Commissioner's statutory guidance provides helpful assistance. Statutory Document number 6 on vocational drivers sets out that as a starting point there should be one month's suspension for each falsification with a 12 months disqualification if

there are five or more falsifications. The starting point of 12 months is patently insufficient in this case in view of the following aggravating features:

- There were not five but nine instances of falsification;
- There were other offences involving failing to comply with the rules that apply;
- The fact that this driver was also the operator of HGVs – so he cannot claim pressure from his employer;
- The lack of co-operation together with the aggression shown to DVSA examiners;
- Despite claims that there was no financial advantage in the falsifications, it is clear that there were very real advantages. The driver himself in interview said that he was under pressure to get jobs done. Of course he was the operator and so he was in a position to address this; and,
- The history of the driver before me involving failures to comply with the drivers' hours rules.

82. I reflect that my order of disqualification until May 2020 is fully merited and is perhaps generous to the driver.

Decisions

83. I make decisions as set out in paragraphs 1-9, above.

Other

84. At the date of the public inquiry my dictation equipment was not working and this has contributed to delay in producing this written decision. Other relevant recent IT problems have included the loss of several months of files from my laptop.



Nick Jones
Traffic Commissioner for Wales
Comisiynydd Trafnidiaeth

31 December 2018