



TRAFFIC COMMISSIONER FOR SCOTLAND

WHYTE CRANE HIRE LTD – OM1024408

CORRECTED DECISION OF THE TRAFFIC COMMISSIONER

1. On 7 December 2018, I held a Public Inquiry to consider (1) an adverse report from DVSA concerning this operator and (2) a variation application whereby the operator sought to double its authorisation, that is, from 5 to 10 vehicles and from 7 to 15 trailers.

2. The usual Public Inquiry call up letter and brief of papers were issued and I have had regard to these. I heard oral evidence from Mr Mark Syme, Managing Director, and Mr Douglas Reid, transport manager. I was disappointed that director Mr Lawrence Whyte was not present. The operator had lodged productions. From these I was satisfied on financial standing.

3. I had some knowledge of this operator from a Public Inquiry of 2013, the background to which was the very distressing deaths of a mother and young daughters. At this Inquiry, inter alia, I had to consider a wheel loss incident of 21 September 2017 in the Newbridge area with a BMW motor car being hit by the detached wheel; a DVSA maintenance investigation; the fining of the operator following the operator being prosecuted under the Health and Safety at Work etc Act 1974 given the severe injury, permanent disfigurement and danger to life of an employee on 21 August 2015; and the conviction of director Mr Lawrence Whyte of dangerous driving leading to him being disqualified from driving until 30 November 2020.

4. I do not rehearse the evidence here. The Inquiry evidence was recorded in the usual way and can be referred to if necessary. I did not conclude the case on the day, as I was surprised that I had not been given a copy of the operator's internal investigation report into the cause of the wheel loss. I knew that such a report existed for a paragraph of the conclusion was quoted in the Vehicle Examiner's maintenance investigation report (Public Inquiry brief page 100). I was told a copy could be made available to me.

5. I now have a copy of that report and I have read it. I am now able to give my decision.

My decision

6. In 2013, I had to consider this operator's systems and attitude to health and safety, particularly in relation to road safety. I took action against the licence. I now find myself considering an incident on 21 September 2017 in which the lady driver of a BMW motor car narrowly missed serious injury (or worse) when the operator's vehicle wheel hit her car. It is patently clear to me that the cause of the wheel loss was insufficient husbandry of the wheel such that paint and debris came to affect the wheel clamping force. (This is well described in the IRTE wheel security best practice and other industry and DVSA publications.) It must have been very scary and distressing for that car driver. I cannot have slackness in wheel security.

7. The 2015 incident involving the severe injury, permanent disfigurement and danger to the employee's life was not a road transport matter but I take from the papers and evidence relative to that, that supervisory practice was deficient on that occasion.

8. Mr Whyte remains the force in this business though now much aided by the addition of directors Messrs Syme and Cardno and their expertise. Mr Syme seemed a serious individual with great industry experience. However, I am concerned by Mr Whyte's attitude to road and public safety. That someone in his position and with his responsibilities could drive in the dangerous manner that led to his conviction and disqualification, presents me with considerable worry. He and I had a dialogue in 2013. It appears from what I was told at this Inquiry, that I did make some impression on him. However, it appears not enough. Mr Whyte was willing to risk the safety of others to drive his fast car. I deprecate his conduct which affects whether I can trust him with an operator licence.

9. I heard much evidence in this case which had positive features and the DVSA investigation revealed such as well. However, my prime duty is to protect the public. The decision I am about to take is one which balances the positives in the evidence with my duty to prevent and protect. I am not going to disregard the danger faced by other motorists and road users.

10. Applying the Bryan Haulage and Priority Freight questions so well known to the lawyers in this jurisdiction, I consider that it would be disproportionate to revoke this licence with the impact that would have on the company. I have thought about revocation – I want Mr Whyte to be in no doubt about that. I have held back. There is sufficient for me to balance in that Messrs Syme and Cardno could provide the element of trust so needed.

11. However, I am not fully reassured and I am in no doubt that regulatory action against this licence is required. With the Court of Session Thomas Muir case very much in mind, which stresses the integrity and purposes of the regulatory regime, I will prevent expansion of this authorisation. I have concluded that the means by which I can put down a very severe marker to this operator is by denying expansion, denying the doubling of the authorisation. The denial of expansion is a tool in my regulatory toolkit and my regulatory opportunity. That denial can serve as a proportionate response to the deficiencies and behaviours revealed in this case. From the evidence I heard, I know that this will present difficulty to the operator and the expansion of the business. Frankly so be it. The operator does not deserve any increases.

12. The variation application to increase the vehicle and trailer authorisations is refused

13. I give a severe warning to the operator on repute.

14. I take no action in relation to transport manager Mr Reid's repute.

15. For the avoidance of doubt, Mr Paul Singer ceased as transport manager in May 2017 and his name should not be on the licence.

Joan N Aitken
Traffic Commissioner for Scotland
Edinburgh

27 January 2019
Corrected on 31 January 2019

Cases referred to: Bryan Haulage (No 2) T/2002/217
Priority Freight T2009/225
Thomas Muir 1999 SLT 666