



WEST MIDLANDS TRAFFIC AREA

DECISION OF THE TRAFFIC COMMISSIONER

PUBLIC INQUIRY HELD IN BIRMINGHAM ON 8 JANUARY 2019

OPERATOR: THE PERFECT GROUP OF COMPANIES LTD

LICENCE OD1144004

Decision

1. The restricted goods vehicle operator's licence held by The Perfect Group of Companies Ltd is revoked with effect from 0001 hours on 16 February 2019 pursuant to Section 26(1)(a), (f) and (h) of the Goods Vehicles (Licensing of Operators) Act 1995 ("the 1995 Act").
2. Brad Smith is disqualified for twelve months, from 16 February 2019 until 16 February 2020, from holding or obtaining any type of operator's licence in any traffic area and from being the director of any company holding or obtaining such a licence, pursuant to section 28 (1), (4) and (5) of the 1995 Act.

Background

Operator details

1. The Perfect Group of Companies Ltd holds a restricted goods vehicle operator's licence (OD1144004) for three vehicles. On the date of the inquiry there were two vehicles specified on the licence. The sole director of the company is Brad Smith.

Previous history

2. Brad Smith was a director of The Perfect Textile Store Ltd, which held licence OK1121895 from October 2013. The company was called to a public inquiry in March 2014 for its failure to monitor drivers' hours. The outcome of the inquiry was that the licence was curtailed from five vehicles to two for seven months. The company undertook that Brad Smith would attend an operator licence management course (which he did) and that it would arrange for a compliance audit to be carried out by 30 September 2014. In the event, the company failed to submit any audit report and the licence was consequently revoked on 20 December 2014.
3. The Perfect Group of Companies Ltd applied for an operator's licence in the West Midlands Traffic Area in February 2016. The application was for five vehicles and six trailers but in view of Mr Smith's previous history a public inquiry was held. On 28 June 2016 the then traffic commissioner TC Jones granted the application but only in part –

for three vehicles and no trailers. The company agreed to an undertaking to be audited by the RHA or FTA (and no one else) within six months (ie by 31 December 2016) and to provide a copy of the audit to the office of the traffic commissioner within 14 days of receipt.

4. In January 2017, after receiving two letters from my office chasing the audit, the company replied that it had not yet started operating vehicles and therefore an audit could not usefully have been carried out. While expressing my disappointment that the company had not notified me of this proactively, I agreed to reword the undertaking so that the audit should be carried out by the RHA or FTA within three months of commencing HGV operation.
5. Nothing further had been heard from the company by March 2018, when my clerk wrote to it to remind it of its undertaking. Brad Smith replied on 5 March 2018 saying that the company had recently (within weeks) started to operate a 7.5 tonne vehicle and an audit had been arranged for 29 March 2018. "The results of this will be sent straight to the commissioner." In the event, nothing further was heard from the operator.
6. In September 2018, I received a report from DVSA vehicle examiner Wayne Bird which stated that:
 - i) the company was operating from an unauthorised operating centre;
 - ii) the operator was not checking driver licences on a regular basis and was not sure if drivers held Certificates of Professional Competence;
 - iii) the company was keeping and operating trailers despite having no authority to do so;
 - iv) there was a lack of maintenance records for the trailers.

Public inquiry

7. In August 2018 the operator applied to change operating centres from its authorised centre in Crossfield Road Birmingham to one at Foundry Lane Smethwick. In September I decided to call the operator to a public inquiry, to consider the variation application and the issues of unauthorised operating centre, unauthorised use of trailers and failure to have the audit carried out. The call-up letter was sent on 7 November 2018.
8. The public inquiry took place in Birmingham on 8 January 2019. Present was Brad Smith, director.
9. I asked about the move to the unauthorised operating centre in Smethwick. Mr Smith accepted he had moved there on or around 2 February 2018: he had been forced to move out of the authorised centre in Crossfield Road at short notice. I asked why it had taken him so long to apply to regularise the position. He said there had been a delay in the newspaper publishing the advert and he had had to readvertise. I noted that Mr Bird's inquiries with the newspaper had shown that the first advert had only been booked on 20 June 2018, more than four months after the operator had moved to the new centre.
10. I asked why the operator had failed to arrange the audit which it had undertaken to have carried out within three months of starting operations. By my calculation, it should have been carried out by early May 2018 at the latest. Mr Smith said this had been an

oversight: he had now arranged with the RHA to visit on 6 February 2019 to perform an audit.

11. Mr Smith had not brought any evidence of finances to the inquiry, despite the call-up letter requesting production of such evidence a week in advance of the inquiry. Nor had he brought any of the maintenance documents or drivers' hours records requested in the call-up letter. Mr Smith accepted that he had not read the call-up letter in its entirety.
12. I asked about drivers' hours oversight. Mr Smith accepted that he was not downloading from the vehicle unit at the required intervals as he did not have a company tachograph card.

Findings

13. After considering all the evidence I have reached the following findings:
 - i) the operator does not have sufficient funds to support a restricted licence for three vehicles (Section 13D and 26(1)(h) of the 1995 Act). No evidence of finances was offered;
 - ii) the operator has used an unauthorised operating centre for a period of several months (Section 26(1)(a) of the 1995 Act refers). More than four months elapsed between commencing operations from premises at Smethwick and getting round to making an application for these premises to be the authorised operating centre. Mr Smith's explanation of a delayed advert could not be supported by the facts;
 - iii) the operator has continued to operate trailers, despite its licence not authorising it to do so. It has thus ignored the restrictions placed on the licence upon grant by TC Jones (Sections 5(2)(b) and 26(1)(h) of the 1995 Act refer);
 - iv) the operator has failed to fulfil its undertaking to ensure that laws relating to drivers' hours and tachographs are observed (Section 26(1)(f) of the 1995 Act refers). It has failed to download vehicle units, and no drivers' hours records have been produced despite a request to do so in the call-up letter;
 - v) the operator has failed to fulfil its undertaking to have an audit carried out within three months of commencing operations. It is now more than 11 months since operations commenced, yet the audit has only just been booked and has not yet been done;
 - vi) the operator has failed to fulfil its undertaking to keep vehicles fit and serviceable. There were no safety inspection records for the trailers in the operator's possession.

Conclusions

14. It is clear that the company has simply ignored many of the requirements relating to the safe and lawful operation of HGVs. I am particularly concerned by the fact that, even though TC Jones's decision in June 2016 was not to allow that part of the application which related to trailers, the company nevertheless simply went ahead and operated trailers. I also attach weight to the operator's failure, despite many reminders, to arrange the required audit. This is particularly reprehensible given that the reason for the revocation of the licence with which Mr Smith was previously associated, The Perfect Textile Store, was also because an audit undertaking was not fulfilled.

15. Mr Smith has not approached the inquiry process with the necessary degree of seriousness. He failed to read the call-up letter properly and failed to bring any of the required records, including financial evidence. It is clear that the reservations expressed by TC Jones in his June 2016 – that “it is clear that [Mr Smith] does not necessarily have the expertise [necessary to be compliant] – have been fully justified in the event.
16. Mr Smith has been unable – through his own negligence – to present any mitigating evidence. His history of unfulfilled undertakings means that I can have no confidence in the likelihood of his complying in the future. The company therefore deserves to go out of business, if that is indeed the result of the revocation of its licence.

Decisions

17. I am thus revoking the licence under Section 26(1)(a), (f) and (h) of the 1995 Act.
18. I have also considered whether to disqualify Brad Smith from holding an operator’s licence and from being a director of any company holding such a licence. Given his repeated failure to manage a licence compliantly and his abject performance at the public inquiry in turning up without any of the required documents and records, I have concluded that a period of disqualification is justified. Mr Smith needs time out of the industry to reflect on what went wrong and to undergo the necessary change of mindset in which compliance is accorded the necessary priority. He needs to be jolted out of his complacency and made to understand that operating HGVs is a serious business and that the rules and regulations which apply to it must be observed. Clearly, a curtailment followed by the revocation of a previous licence, and a grant in part only of the application for the present licence, together with a series of undertakings, have all failed to achieve this.
19. In deciding upon the length of his disqualification I have taken account of paragraph 100 of the STC’s Statutory Guidance Document 10. This posits a starting point of between one and three years for a first public inquiry. This is in fact the third public inquiry which Mr Smith has attended, although one of these was for the grant of a licence. I conclude that a disqualification period of 12 months is proportionate, appropriate, and in line with the STC’s guidelines.



Nicholas Denton

Nicholas Denton
Traffic Commissioner
16 January 2019