



**IN THE NORTH WEST TRAFFIC OF ENGLAND
WRITTEN CONFIRMATION OF THE ORAL DECISION OF
THE TRAFFIC COMMISSIONER**

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

**NATHAN JONES
OC2009106**

Public Inquiry held at Golborne
25 February 2019.

Decision

On findings in respect of this licence under Section 26 (1) (c) (iii), (ca), (e), (f) and Section 6 of the Act. I revoke this operator's licence with effect from 8 March 2019 at 23:45, this period being provided solely to allow for the orderly closedown of this business.

I exercise my powers to disqualify this operator whether a sole trader, partner or company director, or as the holder of a controlling interest in the company. The period of disqualification will be for 30 months.

Background

1. **Nathan Jones (OC2009106)**, a sole trader, is the holder of a Restricted Goods Vehicle Operator's licence for 1 vehicle and 3 trailers, granted on 24 April 2018.
2. An application is before me to increase the licence to 3 vehicles and 3 trailers made on 11 January 2019.
3. An application by Nathan Jones trading as Saints & Sinners (OC1143822) had previously been refused on 2 November 2016. The current licence, granted only for a single vehicle, was considered by me a Public Inquiry on 3 April 2018. The licence was granted with undertakings; they are not directly relevant to the matters now before me.

Calling in to Public Inquiry

4. A catalogue of incidents of concern led to the operator being called to Public Inquiry. The calling-in letter referred to allegations of using more vehicles than are permitted under the licence, to the accumulation of prohibitions, fixed penalties, as well as, to breaches of the statement of intent and undertakings attached to the licence, and to material change.
5. The brief before me contained the written statements of Traffic Examiner (TE) Maher, TE O'Connor and Vehicle Examiner (VE) Hayden Smith. Their evidence has not been the subject of direct challenge (except as set out below) and therefore I set the matters raised here.
 - a. The operator's vehicle PY15 JAJ was encountered at another operator's yard on 26 July 2018, where:
 - It received an immediate prohibition in respect of a seriously under inflated tyre. Mr Jones (who had been the driver) accepted that a sub-standard walk round check may have contributed to the finding because of poor light and an inadequate torch, when he set out that morning;
 - The trailer was the subject of an "S" marked immediate prohibition for a tyre worn far beyond the legal limit (measured at only 0.33mm) and a delayed prohibition for a cut in another tyre;
 - It was further found that neither the vehicle, nor the trailer had a current MOT test in force. Mr Jones told me he had no knowledge of this, passing the blame to the lease company. He acknowledged however that there had been no formal contract with the lease company and he did not immediately terminate at that contract upon discovery of this serious issue;
 - Neither was the vehicle itself listed on the Nathan Jones operator's licence. Another vehicle was already listed on the licence and therefore there was no margin, which would enable this vehicle's use, without the removal of the other vehicle. Mr Jones described "oversight" on his part for this error;

- Nathan Jones had been asked during the encounter for his driver card and any other drivers' hours record, printouts or loading documents. No card had been inserted in the tachograph head for the use of the vehicle that day and no manual record had been made. Driver Jones described believing he had lost the driver card but no report of the loss had been made to DVLA and no printout prepared upon driving the vehicle for the first time that day. It had transpired the card was not lost but remained in his wallet in his wife's car. He wrongly believed that a printout completed at the end of the day would be sufficient record;
 - Driver Jones accumulated £600 of fixed penalties. He told me that the tickets had been paid but a conviction, served upon him during the hearing, evidenced that the tyre fixed penalty was unpaid and that he was fined £440 with £178 costs and 3 penalty points were endorsed on his licence on 19 February 2019. Mr Jones denied any prior knowledge of the court conviction, or of the paperwork sent to his home address before the hearing date. He disputed the conviction, although he admitted the tyre offence.
- b. On 12 September 2018, there was another encounter. This time with two vehicles, which the DVSA believed to be operated by Nathan Jones. This was a joint operation with Derbyshire Police and the Environment Agency.
- The first of them, PY15 JFJ was being driven by Driver Coates but it was detected that Driver Coates' Driver Qualification Card had expired two weeks' earlier, and therefore that she was ineligible to drive LGVs. Mr Jones said he had employed her as cover for himself as his wife was ill. He said she had not told him of its expiry and that he had not checked the record he kept in his diary of such matters, having previously checked the validity of her entitlement;
 - Inspection of the vehicle disclosed damage to the brake discs on both the nearside and offside first axle of the vehicle. The prohibitions described the disc as fractured through the surface into the ventilation cavity. Mr Jones accepted the finding for one disc but did not accept the second had actually fractured. He believed that the vehicle had recently been inspected but no defect had been noted and no inspection sheet was available to me;
 - The vehicle (again) had not been nominated upon the operator's licence. Mr Jones (again) described "oversight" for this state of affairs. No margin existed on the licence, which would have allowed deployment of the vehicle;
 - The same day, DVSA also encountered a second vehicle, FG63 EUF and Driver Nussey. DVSA officers spoke to Driver Nussey, who said that he was working for Mr Jones. A representative of Fred Sherwood Ltd, who came to the site, confirmed the vehicle to be on hire to Nathan Jones. Mr Jones denied this was the case. He described something akin to a sub-contracting of his work to Fred Sherwood Ltd, although no evidence of the form of any agreement was produced, even though this was clearly a matter likely to be relevant within the hearing;

- No disc was displayed in this vehicle;
 - The vehicle had a tyre that was so seriously under-inflated to the point where it was not properly seated on the wheel rim. This state attracted an immediate “S” marked prohibition.
- c. TE O’Connor issued a letter under Section 99 of the Transport Act requiring the operator to produce drivers’ hours, tachograph and associated records for the period February to August 2018. A second letter was handed to Mr Jones, when he said he had not received the initial letter. Neither letter received any response. Mr Jones denied receipt of the first letter at his home address. He claimed that there was some unreliability in the receipt of post due to the propensity of his dog to destroy mail received! He claimed some response was made by him but denied sight of the full list of items requested, having stated that the TE had only provided a piece of paper indicating the date they were required.
6. In addition, at the hearing, I asked Mr Jones about the documents which were required to be provided for the Public Inquiry but which were not produced by him. These included:
- No financial evidence covering a 3-month period was produced for the hearing, though I was able to confirm that one-month’s bank statements were provided, which were satisfactory. Mr Jones could offer no clear explanation for the failure to provide the full extent of what was required;
 - When I asked about his accounts, I was told that Mr Jones did not employ accountants or other professional advisors and therefore no profit or loss account or end of year balance sheet was provided for the business;
 - The calling-in letter required the provision of preventive maintenance inspection reports for the last 6 months. Mr Jones provided only a single vehicle record for PY15 JPJ and its Wilcox trailer dated 10 December 2018. It was therefore impossible to establish whether maintenance had appropriately been carried out. I was told that the hired in vehicles were contracted for with a full maintenance provision but it was said not to have been possible (despite requests) to obtain any of the records for any vehicle that is either PY15 JPJ, PY15 JPA or the newest vehicle YT62 DJJ. This latter vehicle was said to have been serviced during the previous week and the paperwork for it was said to be in the operator’s car;
 - I was told YT62 DJJ had been operated since 14 January 2019 (in place of PY15 JFJ), although it (too) was not yet nominated on the licence, even after close to 6 weeks’ use, and PY15 JFJ had not been removed. In fact, however, when the driver infringement report produced for Driver Mitchell was examined, I noted there was continued use PY15 JFJ though until 25 January 2019, two weeks after YT62 DJJ was first deployed. There is no margin on the licence which would allow the use of two vehicles, unless one was removed from the licence;
 - No driver defects reports were produced whatever.

7. In his evidence, Nathan Jones told me of steps taken since these matters arose which he believed demonstrated compliance with licence expectations. These included:

- His attendance at a New Operator Seminar on 29 August 2018 at which he had learned a lot;
- Changes in the hirer of the vehicles and trailers to his business. I saw evidence of a written contract with Truckfast for vehicle YT62 DJJ. Mr Jones had moved away from the previous company as he said it had failed to carry out and evidence maintenance;
- Third party management of drivers' hours compliance had now been put in place;
- He was no longer driving large goods vehicles at present but planned to in the future;
- All the permits and licences for the waste business were now obtained, and another haulier had been used to cover work not capable of being discharged by the single vehicle under the licence;
- He contended that "since the seminar everything is above board and done correctly".

Findings on disputed matters

8. So far as it is necessary to make formal findings on matters of dispute, I make the following findings:

- a. I am satisfied on the balance of probabilities that the operator did breach the terms of his licence under Section 6 of the Act on 12 September 2018, when a multi-agency exercise encountered two vehicles. I find the descriptions given at the time about Fred Sherwood hiring FG63 EUF to Mr Jones to be accurate, alongside the explanation of Driver Nussey to TE O'Connor;
- b. Further I find it more likely than not that vehicles were used which were not nominated on the licence at times when no margin for such use, whether temporary or not existed;
- c. I prefer the evidence of TE O'Connor that when he issued a further request under Section 99 for the production of tachograph documents that he did so as described in his written statement by issuing a fresh copy of the request letter. I find that Mr Jones failed to comply with the terms of the enquiry then made.

Conclusions

9. I conclude that there are clear grounds justifying action being taken against this licence under Section 26 (1) (c) (iii), (ca), (e), (f) and Section 6 of the Act.

10. I am not satisfied of the sufficiency of financial resources to ensure vehicles on the road are fit and serviceable because I have not been provided with sufficient materials for a calculation for a three-month period to be carried out.
11. I find there have been material changes in circumstances relevant to fitness to hold this licence.
12. Mr Jones has singularly failed to satisfy me that he can be trusted to operate this licence compliantly. Exposed in the findings set out above are a series of matters going directly to road safety: that is "S" marked prohibition on two occasions pointing to serious failures in the systems supporting the deployment of fit and serviceable vehicles. A prohibition rate of 100% for vehicles raising serious issues with braking systems, tyres and the vehicle fabric. The commission of offences either met with a conviction or fixed penalties, including the use of a vehicle and trailer not covered by MOT. A failure to manage a driver so that she had an in force CPC qualification.
13. I am not satisfied that maintenance inspection arrangements and driver walk round procedures support compliant operation. Nor am I able to conclude that the management of suppliers, whether of vehicles and trailers or maintenance is adequate, or that Mr Jones' capable of managing paperwork. I conclude that the argument that matters have improved is not substantiated on the evidence. There has been an abject failure to provide any corroboration that this is the case, or to provide the majority of the information required for the hearing.
14. Just as the conduct of the operator prevented any examination of maintenance records in August or September 2018, the position today mirrors that position. Similarly, the way in which TE O'Connor's efforts to review drivers' hours compliance between February and August 2018 were thwarted, the limited analysis for a single driver for a period of less than 2 months does not go far enough. The odometer readings themselves disclose that other drivers will have also carried out driving, although it is not disclosed on the materials produced. What the operator has achieved seems to me to be, far too little, far too late.
15. I conclude that road safety, the integrity of the regulatory system and the preservation of fair competition in the industry have been compromised because of my findings.
16. I judge that 'severe' regulatory action as set out in the Senior Traffic Commissioners Guidance Document No.10 is justified. I find deliberate acts by the operator have led to unacceptable risk to road safety and fair competition. Bearing in mind the licence has been in force for only 10 months, there has been a substantial number of prohibitions and fixed penalties. Management control has been ineffective across a full range of issues - maintenance, compliance systems, and drivers' hours.
17. When I come to ask myself the key questions set out in the case law, I find that this is not an operator who I would be able to trust to be compliant in the future. When I go on to ask myself if it is proportionate that he be excluded from the industry, I find ample evidence for this to be the appropriate conclusion. The trust I had placed in this operator in granting him a licence has been completely undermined.

18. I have gone on to ask myself whether I ought to exercise my powers to disqualify and conclude this would be appropriate. This is not the operator's first appearance at a Public Inquiry but I restrict disqualification to a period of 30 months.
19. I revoke this operator's licence with effect from 08 March 2019 at 23:45, this period being provided solely to allow for the orderly closedown of this business.
20. In the light of this decision, the application to vary the licence is refused.

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