



Office of the
Traffic Commissioner

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DECISION OF THE TRAFFIC COMMISSIONER

Ladywood Furniture Project Ltd
Standard national licence OD0259306

Transport Manager Richard Girling

Written version of decision given orally at a public inquiry in Birmingham on 28 February 2019

Decision

1. Standard national licence OD0259306 held by Ladywood Furniture Project Ltd is revoked with effect from 0001 on 1 April 2019 pursuant to Section 27(1)(a) and (b) and 26(1)(e) and (f) of the Goods Vehicles (Licensing of Operators) Act 1995 ("the 1995 Act").
2. The good repute of transport manager Richard Girling is lost, pursuant to Schedule 3 of the 1995 Act. Under paragraph 16 of that Schedule, he is disqualified indefinitely from acting as a transport manager on any operator's licence in the European Union.

Reasons

3. The reasons for the revocation of the licence are as follows:
 - a) the operator lacks financial standing. The operator has lacked financial standing for the five vehicles for which it is authorised for a considerable period of time. Only in the last few days has the provision of an overdraft of £25,800 by the bank enabled the operator to show the sum provided. However, financial standing is a continuing requirement and it is not sufficient only to bring up the funds to the required level a few days before the public inquiry. Revocation of the licence is mandatory under Section 27(1)(a) of the 1995 Act;
 - b) the operator failed to specify vehicles on its licence within the one month's grace period, contrary to Section 5(6) of the 1995 Act;
 - c) the operator has failed to fulfil the promise it made when applying for the licence that its vehicles would be given safety inspections every six weeks. There are gaps of up to three months for the two vehicles which have been in the recent continuous possession of the operator;
 - d) the operator has failed to fulfil its undertakings to:
 - i) to ensure the lawful driving and operation of vehicles – at least three vehicles have been operated for periods of several weeks while uninsured;
 - ii) to ensure the observance of rules relating to drivers' hours and tachograph. Only very sporadic downloads of driver cards and vehicle units have taken place; no download of agency drivers' cards has taken place at all until the last few weeks, the operator has failed to detect multiple and very serious drivers' hours offences, including numerous instances of driving without a card. One employed driver withdrew his card and drove on 42

occasions, to get home early. His card was not being downloaded by the operator;

- iii) to ensure that drivers report defects in writing. The driver defect reporting regime is clearly dysfunctional – the defect forms are not fit for purpose, lacking a space for the driver name. The drivers have failed to enter the registration number on some forms. Many of the six-week safety inspection sheets show driver detectable defects such as broken lights and mirrors, defects which should be picked up and rectified on a daily basis, not left to the next inspection.

Transport manager - repute

4. I considered the good repute of transport manager Richard Girling. He is clearly not up to date with drivers' hours rules. Even before his illness he was only downloading driver cards every 3 months and never downloading agency drivers' cards. For the last 12-18 months there were hardly any downloads at all before the roadside stop of a driver in September 2018. Mr Girling was therefore wholly unaware of multiple the offences being committed by drivers.
5. Nor was he aware that vehicles were not being inspected at the stated six week intervals, apparently relying on the maintainer to call vehicles in. There was no forward planner until December 2018. Mr Girling was not aware either of the need to specify vehicles on the licence. He thought that as there was a margin vehicles could be added within it without notifying the central licensing office in Leeds and without therefore obtaining vehicle discs.
6. Mr Girling also failed to realise that, with vehicles being hired in for relatively short periods on a regular basis, the necessary changes to insurance policies were not being made, with the result that at least three vehicles operated while uninsured for a period of several weeks.
7. Mr Girling acquired his transport manager CPC in 1994 but has not undertaken any refresher training since. This failure means he now lacks much of the basic knowledge I would expect a transport manager to have.
8. Still more seriously, Mr Girling forged driver infringement letters to give the DVSA traffic examiner the impression that he had been bringing drivers' hours offences to drivers' attention. The infringement letters purported to have the drivers' signatures on certain dates but the date stamps on the letters showed that they had been printed out only much later. Mr Girling stated that he had had verbal discussions with the drivers concerned but accepted that he had created the documents afterwards to give the impression that a written record had been kept. He also accepted that he had forged letters reminding a driver to have his card downloaded – in reality his reminders had been only verbal.
9. I found very little to put on the positive side of the balance. His creation of false records and wholesale failure to carry out the functions of a transport manager makes a finding of loss of good repute and consequent disqualification inevitable (Section 27(1)(b) of the 1995 Act refers). I do not foresee being able to accept Mr Girling on a licence as TM in the foreseeable future: I am therefore disqualifying him for an indefinite period of time. If at some stage in the future he wishes to re-enter the industry as a transport manager, he must first retake and pass the transport manager CPC exam.

Operator

10. The operator lacks financial standing and it has lacked a transport manager with good repute (I accept that it intends imminently to make an application for a new transport manager Mr Robinson). The company's directors and general manager have left everything in the hands of a transport manager who was manifestly not up to the job and have never sought to satisfy themselves whether he was in reality fulfilling the requirement to exercise continuous and effective management of the transport activities of the business. They must bear a large measure of responsibility for the substantial failings of compliance which have occurred on their watch.
11. The balancing exercise for the operator contains the negative elements above. transport manager. There are some elements on the positive side, including the willingness to appoint a new transport manager who clearly has a better understanding of his duties than Mr Girling. The general manager has also booked himself on a training course, although this was done only yesterday and the course is not until April, which is disappointing.
12. I have asked myself the *Priority Freight* question – how likely is it that the operator will comply in future? In my judgement the answer is not very likely without wholesale changes to the organisation's culture and management and supervisory structure. At present the transport manager reports to a general manager who works only two days a week and has no knowledge of an HGV operator's responsibilities. The directors are hands-off volunteers with absolutely no oversight of compliance. Their conduct in seeking to blame the transport manager alone for the failures suggests to me that they still do not understand their responsibilities. Such positive elements as there are have come very late in the day and are insufficient to outweigh the negative.
13. A negative answer to the *Priority Freight* suggests a positive answer to the *Bryan Haulage* question - is the conduct such that the company deserves to go out of business? It has operated uninsured vehicles; it has entirely failed to monitor drivers hours with result that drivers committed numerous and serious infringements; its vehicles have not been given safety inspections at the promised intervals; its transport manager has forged records in response to the DVSA report (although the general manager and directors should by now have been taking a much closer interest matters given that the operation was under investigation by DVSA). I am afraid the conduct of the company does indeed merit the closure of the transport side of its business and if that means it has to go out of business altogether, then so be it.

Issue of disqualification of operator and directors

14. I have stopped just short of disqualifying the company and its directors from applying for a licence in the future. The directors have been naïve, incompetent and ignorant – in the matter of HGV operator compliance - rather than deliberately attempting to flout the law. But they should be under no illusion about the massive scale of the change in culture and procedures needed before any future application stands any chance of being granted. Directors must take responsibility for compliance; at least one director and a manager must have undergone relevant training; new compliance procedures must be designed from the ground up.

Nicholas Denton

Nick Denton
Traffic Commissioner
28 February 2019