WEST MIDLANDS TRAFFIC AREA

DECISION OF THE TRAFFIC COMMISSIONER

PUBLIC INQUIRY HELD IN BIRMINGHAM ON 27 MARCH 2019

APPLICANT: CHRISTOPHER ORCHARD

Decision
1. The application made by Christopher Orchard for a restricted goods vehicle operator's licence for one vehicle is refused, pursuant to Section 13B of the Goods Vehicles (Licensing of Operators) Act 1995 ("the 1995 Act").

1. On 27 November 2018, vehicle BU02 OVL was stopped by DVSA at the roadside. The vehicle was specified on licence OD0265750 held by Steven and Joan Whitehouse. However, further DVSA inquiries found that the driver Christopher Orchard was in fact also the operator of the vehicle. Steven Whitehouse accepted that he had allowed Mr Orchard to specify the vehicle (a mobile butcher's shop) on his licence as there was a margin: the vehicle had been operated, maintained and insured by Mr Orchard and the Whitehouse partnership had had no involvement with it.

2. On 29 November 2018, Christopher Orchard applied for a restricted licence for one vehicle. A letter dated 5 December 2018 from the central licensing office in Leeds acknowledged the application and reminded Mr Orchard that he could not, while the application was being considered, operate vehicles of more than 3.5 tonnes. Because Mr Orchard had operated BU02 OVL without a licence for almost two years I decided to consider the application at a public inquiry. The call-up letter was sent on 20 February 2019, citing Section 13B and 13D of the 1995 Act. The public inquiry was held in Birmingham on 27 March 2019.

Public inquiry

3. Mr Orchard attended. He said he had been wholly ignorant of the fact that the arrangement he had come to with the Whitehouse partnership was unlawful. His vehicle had been parked up since the stop on 27 November 2018 and he had since carried out his business using a 3.5 tonne transit van.

4. I looked at the maintenance documents he had provided for BU02 OVL and saw from the six weekly inspection sheets that the vehicle had travelled 1200km between 3 December 2018 and 3 January 2019. This was at odds with Mr Orchard's claim that the vehicle had been parked up for the whole period. Mr Orchard then admitted that he had taken the vehicle to some markets during that time, as it was the busy pre-Christmas period.

Conclusion

5. The operator licensing system works on trust. A traffic commissioner has to be able to trust an operator to comply with the rules. Christopher Orchard has unlawfully operated a vehicle under the

umbrella of someone else's licence for 22 months between February 2017 (when BU02 OVL was specified on the Whitehouse partnership's licence and the end of November 2018. I am willing to accept that he did this through naivety and ignorance rather than any deliberate attempt to circumvent the law.

6.   However, Mr Orchard compounded this offence by not being truthful to me at the inquiry. Despite knowing from 27 November 2018 that his use of BU02 OVL was unlawful, and despite being clearly informed in CLO Leeds's letter of 5 December 2018 that further operation of the vehicle was unlawful, he in fact continued to operate it for a further 1200km during the period 3 December 2018 to 3 January 2019.

7.   I am very disappointed that Mr Orchard chose to be untruthful about this further operation during the inquiry today. In the light of this attempted deception, I conclude that I cannot be confident that he will comply with the law in the future. He has shown that he is prepared to choose business convenience over compliance with the law. A person who makes this choice is not fit to hold a licence, and I am accordingly refusing the application under Section 13B of the 1995 Act.

8.   For any application from Mr Orchard to have any chance of success in the future, there must be no indication of illegal operation for at least the next 12 months. He should also attend an operator licence management course before submitting any application after this period.

Nicholas Denton

Nicholas Denton
Traffic Commissioner
27 March 2019