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DECISION OF THE TRAFFIC COMMISSIONER FOR THE NORTH WEST OF ENGLAND

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

JA & PN Ltd
OC2011445

Public Inquiry held at Golborne
on 8 April 2019.

Decision

On findings made in accordance with Section 26 (1) (c) (iii), (f) and (h) of the Act, the latter on counts of both finance and fitness, I direct that an order for revocation of the licence take effect on 16 May 2019 at 23.45 hours.

Further, I disqualify this company from holding or obtaining an operator's licence for a period of 3 years.

As far as the director, Joseph Bradley is concerned, I disqualify him for a period of 18 months, from holding or obtaining an operator's licence in any traffic area, whether as a sole trader, partner or director, or a person with a controlling interest in any company holding a licence.

Background

1. JA & PN Ltd is the holder of a Restricted Goods Vehicle Operator's Licence for 2 vehicles. I was told at the hearing that the company trades as Monkey Scaffolding. It was granted on 21 May 2018, subject only to an undertaking requiring the operator to provide evidence to satisfy financial standing for a full period of 3 months (June to August 2018) by 30 September 2018.

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2. The directors of the operator company are husband and wife, Joseph Bradley and Andrea Bradley. The company was incorporated on 30 January 2018. Neither director had previously held a licence.

Circumstances leading to the Public Inquiry

3. There had been concerns during the licence application process, and immediately thereafter, about whether the application was a “front” for someone else. (*In this context, a “front” being a description of a circumstance, where the person (or persons) holding the licence is/are in reality masking the role of another person not named on the licence, who in fact makes the key decisions about the direction of the business*).
4. The original application had been supported by financial evidence showing a large deposit into the applicant’s account from another company, Absolute Roofing Contractors Ltd.
5. Absolute Roofing Contractors Ltd had never held an operator’s licence.
6. When he had been asked to clarify the source of those funds, the monies had been described by Joseph Bradley as representing “*sales revenue generated from work completed*”. It was noted at that stage that Peter Lightfoot had been a director of Absolute Roofing Contractors Ltd from August 2016 until 4 September 2017. He had though been succeeded as director by Edwin Martin, who I now know to be the father-in-law of Joseph Bradley.
7. That response from the applicant operator, when the sum that had been deposited was queried, was made in the name of Joseph Bradley but was contained in an email with a header “Peter Lightfoot < jaandpnltd@gmail.com >”. Joseph Bradley was subsequently challenged as to how (and why) that could be but replied that some computer equipment had been purchased from another company, Romiley Coach House Ltd, and that shortcomings in the setting-up process of the IT had led to Peter Lightfoot’s name mistakenly appearing on the e-mail.
8. He had offered assurances that neither the directors, nor the shareholders of JA & PN Ltd had any links to Romiley Coach House Ltd.
9. Companies’ House records showed that itself a former operator’s licence holder, Romiley Coach House Ltd (OC1146430) had entered liquidation on 28 February 2018. The co-directors of that company were Peter Lightfoot and Nicola Lightfoot. The operator’s licence for that company was revoked on 5 October 2018, the liquidation never having been notified to my office, despite it being a material change. Two trading names had been used by Romiley Coach House Ltd: these were Monkey Scaffolding and Burnley Roofing.
10. Edwin Martin, the father-in-law of Joseph Bradley had succeeded Peter and Nicola Lightfoot as director of Romiley Coach House Ltd on 4 September 2017.
11. In reliance upon the explanations offered by Joseph Bradley, the operator’s licence had been granted.

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12. It was subsequently discovered that Peter Lightfoot had been made subject to a Company Director's Disqualification Act 1986 (CDDA) undertaking disqualifying him from acting as a director, or having involvement in the management of any limited company for a period of 3 years and 6 months. The order had been made on 11 September 2017 and was in respect of his misconduct as a director of another business, Burnley Roofing Contractors Ltd.
13. Nicola Lightfoot had similarly been disqualified on the same day, in accordance with the CDDA, this time for 2 years and 6 months because of her misconduct as a director of the same company.
14. The dates of the respective resignations of Peter and Nicola Lightfoot from their directorships of Absolute Scaffolding Contractors Ltd and Romiley Coach House Ltd are consistent with the then impending disqualifications imposed very close to those dates.
15. Immediately upon grant of the JA & PN Ltd licence, a vehicle, which had formerly been on the Romiley Coach House Ltd licence was then nominated for addition to the JA & PN Ltd licence.
16. In July 2018, one of JA & PN Ltd vehicles, LU04 KNS had received a prohibition for an ABS warning light fault. It was also noted at the time that no operator's licence identity disc was displayed and that a stop lamp was inoperative.
17. No financial evidence had been produced by the operator in satisfaction of the undertaking entered into upon grant of the licence, as had been promised, despite a reminder email sent on 26 September 2018, just before it was due.
18. No response was forthcoming when my clerk rang the operator on two occasions on 5 October 2018 to chase up the evidence.
19. Nor had any response been provided to my clerk's letter of 9 October 2018 requesting further information.
20. On 13 November 2018, at my direction, a letter Proposing to Revoke (PTR) the Restricted Goods Vehicle Operator's Licence under section 26 (1) (b) and 26 (1) (h) of the Act was issued. At this point, the operator did respond and requested a Public Inquiry.
21. The calling-in letter for this Public Inquiry referred to the issue of prohibitions in respect of vehicles listed on the licence, breach of an undertaking to keep the vehicles fit and serviceable and material change in the circumstances of the licence holder, relevant to both its fitness and the sufficiency of its financial resources to maintain vehicles properly.

The hearing

22. Present for the hearing at Golborne on 8 April 2019 were Joseph and Andrea Bradley, the operator's directors, who were unrepresented.

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23. This was the second listing of the matter, which had initially been the subject of a proposed Preliminary Hearing to be held on 13 February 2019. Neither director had been present when the case was called on but a telephone call made by my clerk to Joseph Bradley led to it being reported to me that he had claimed not to have received the calling-in letter and therefore had been unaware of that hearing. It was pointed out to him that the brief of papers for the hearing were dispatched by first class mail, recorded delivery service and by email to the notified contact addresses. My clerk had subsequently shown me the post office "Track and Trace" record, which evidenced the receipt of the recorded delivery letter on 23 January 2019, when it was shown as collected and signed for by 'Bradley' at the Burnley Delivery Office.

24. In these circumstances, I had directed that the operator be called in to Public Inquiry because I believed that the operator had ignored proceedings, or that its systems were apparently inadequate to deal with the legitimate requests of its regulator.

The evidence

25. I heard evidence principally from Joseph Bradley:

- a) He continued to deny that any correspondence for the earlier hearing had been received by the operator. I was told that "lots of mail" was being lost and that between the hearings the company had changed the postal arrangements for the business to his home address;
- b) When pressed however, I established that Absolute Roofing Contractors Ltd in fact shared the same operating centre and the same office space located there. Joseph Bradley did not believe that persons associated with that company would have taken any material posted or left there. No explanation could be offered for why a person unknown had seemingly taken the card left by the postal worker, travelled to the Post Office in Burnley and signed for the letter calling the operator to the Preliminary Hearing but not passed it on to him;
- c) No explanation was proffered as to why the email inviting the operator's attendance at the Preliminary Hearing had not been received at the email address which Joseph Bradley confirmed was managed by him personally, and which had been used to correspond with him successfully in the past;
- d) I then asked Joseph Bradley about the derivation of the company's name, JA & PN Ltd. I was told that the "JA" represented his and his wife (Andrea's) initials. I asked about the "PN", he replied that this "*was just made up*". When I challenged this explanation and offered that I believed the "PN" might in fact stand for Peter and Nicola (Lightfoot), he accepted that this was in fact the case, that there had been a plan for them to be involved but they had dropped out;
- e) When I put it to him, Joseph Bradley admitted that he had told me a direct lie in response to my earlier question;

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- f) Asked about the vehicle without an operator's licence identity disc, he speculated that the disc might have been "thrown out" because it had been falling out of its holder on the windscreen of the vehicle;
- g) Asked why he had never produced the financial evidence required in his undertaking given in September 2018, Joseph Bradley could only offer that he had been "very busy" at the time and had completely forgotten about it. When pressed as to why he had never subsequently produced such materials, no effective response could be offered. He did however accept that financial standing would not have been met at that time and that this might have been why he had apparently ignored requests. He said there was "*not much going on in the business at that time*";
- h) As is commonplace, the operator had also been requested to provide evidence of financial resources for the Public Inquiry in the sum of £4800, over the preceding 3 months. It was patently clear that it would be a relevant issue within the proceedings, since it had never been formally satisfied.
- i) The bank statements provided covered only 2 months and evidenced a closing balance of only £[REDACTED]. Financial standing was not met: Joseph Bradley claimed that, given the opportunity to provide further evidence, financial standing would be met;
- j) Rather to my surprise, upon close review, the statements disclosed none of the typical transactions of an active scaffolding business - for example payment of staff wages, HMRC payments for those employees, sums spent on the maintenance of vehicles, fuels etc. Whilst some credits for monies received through the bank from one of their clients, Absolute Roofing Contractors Ltd, there were equal volumes of sums debited in that company's favour. These payments could not be explained by Joseph Bradley;
- k) In response at Joseph Bradley described a business that was almost exclusively dealt with on a cash basis whether for wages or for diesel. He initially described a petty cash account operated by his wife but it transpired that there was no bank account as such but simply cash held. I was not satisfied that such an arrangement was likely to support accurate record keeping for accounting purposes, although I note that paying staff in cash is not unlawful provided that proper records are kept, appropriate sums are paid over to HMRC in respect of income tax and National Insurance and that payslips are provided at all times;
- l) Joseph Bradley admitted he had always been a scaffolder, never held an operator's licence but that it was when he had had the opportunity to take over his father-in-law Edwin Martin's business, he had done so;
- m) Joseph Bradley was asked about a telephone call made by a clerk in my office on 13 February 2019 to seek to contact him on 13 February 2019. She recorded a case note that day on the operator's file as follows:

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“Telephone call to operator. The lady that answered the phone said that she would “get Peter, I mean Joe, to give you a call. They work together you see.”

n) I noted that when Joseph Bradley provided further material after the Public Inquiry in the form of an email and attachment on 9 April 2019 that the email header continued to bear the legend “Peter Lightfoot <jaandpnltd@gmail.com>”.

26. I conclude that the allegations made under Section 26 (1) (c) (iii) and (f) of the Act are made out.

27. Similarly, I found the allegations of material change on counts of both finance and fitness were substantiated under Section 26 (1) (h) of the Act.

Consideration

28. In reaching an appropriate and proportionate determination, having made these findings, I have sought to balance the positive and negative factors.

29. The positives (not already referred to) include:

- a) Joseph Bradley had appreciated the need for refresher of his knowledge and carried out a day of training and learned a lot;
- b) No further adverse reports about the maintenance of vehicles have been brought to attention since July 2018;
- c) The operator offered assurances about compliance in the future.

30. The negatives are set out extensively above. They can be summarised in the following manner. I am not satisfied that I can trust this operator. I believe that there are links of significance with Peter and Nicola Lightfoot that were never declared during the application process of the licence. I find that my office was misled by the operator during that period. I find that links continue and that it is more likely than not that neither Joseph Bradley nor Andrea Bradley are the guiding minds behind this business. I find that it is more likely than not that they are a front for Peter Lightfoot and/or Nicola Lightfoot. The failures to evidence financial standing at any stage and to receive and act on correspondence calling them to the Preliminary Hearing supports that view.

31. The financial sufficiency requirement is not met. No real effort has been made at any stage to satisfy the undertaking to provide evidence of financial standing. Allowing further time to seek to meet the requirement is inappropriate bearing in mind the lengthy period that has already passed, and that the operator must have understood that the hearing was substantially concerned with finance.

32. The operator told me a direct lie in the hearing, which has further undermined any confidence I might have had in the operator. It has been said repeatedly by the Upper Tribunal that the foundation of any licensing regime is the regulator’s ability

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to rely upon the operator to do what it has promised to do. I simply cannot trust this operator.

33. I have had regard to the Senior Traffic Commissioner's Statutory Document No. 10: Principles of Decision-making and the Concept of Proportionality and, in particular, Annex 3. I have though determined that as at the date of this Public Inquiry the negative findings made much outweigh the positives for the operator. I find that it is appropriate that bearing in mind the nature of the findings made that I conclude that severe regulatory action is appropriate in this case.
34. The Statutory Guidance Document provides starting points for consideration by Traffic Commissioners in considering regulatory action. Whilst each case must be dealt with on its own merits, action taken including licence revocation and disqualification from holding or obtaining operator's licences is reserved for categories of case falling into the definition as warranting "severe" action being taken.
35. Having given the operator such credit as I can and then asking myself at this stage the so-called Priority Freight question, I conclude I am not satisfied that this operator will be compliant in the future. My trust and confidence in this operator has been lost. The scale of the default is simply too great for this licence to continue. This was a licence granted with a specific financial undertaking put in place that has never been met: it has in fact been ignored.
36. So much so that when I ask myself the Bryan Haulage question - "Is the conduct of this operator such that it ought to be put out of the business?" I conclude that it is appropriate and proportionate to answer that question in the affirmative, given the findings made in the balancing exercise undertaken. The operator has completely lost my confidence.
37. I cannot see how, on the facts of the case, it would be disproportionate or plainly wrong to revoke the operator's licence under each of the sections set out above.
38. I direct that this order for revocation take effect on a date some 3 weeks from the promulgation of this decision that is on 16 May 2019 at 23.45 hours, to enable an orderly closedown of the business.
39. I have considered whether it is appropriate that I make an order disqualifying the company and any of its directors from holding or obtaining an operator's licence in any traffic area in any capacity.
40. I find that as far as the company is concerned such a step to be entirely appropriate and for the period to be set at 3 years.
41. As far as the director, Joseph Bradley is concerned, I disqualify him for a period of 18 months, as being a proportionate period that reflects the lie that he was prepared to tell within the hearing.

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A handwritten signature in black ink, appearing to read 'Simon Evans', with a horizontal line underneath.

Simon Evans
Traffic Commissioner
for the North West of England
25 April 2019