



WEST MIDLANDS TRAFFIC AREA

DECISION OF THE TRAFFIC COMMISSIONER

PUBLIC INQUIRY HELD IN BIRMINGHAM ON 2 APRIL 2019

OPERATOR: R M COMMERCIALS LTD

LICENCE OD1143919

Decision

1. The standard national goods vehicle operator's licence held by R M Commercials Ltd is revoked with effect from 0001 hours on 9 May 2019, pursuant to Sections 26(1)(f) and 27(1)(a) of the Goods Vehicles (Licensing of Operators) Act 1995 ("the 1995 Act").
2. Company director Richard Morrin is disqualified for two years, from 9 May 2019 until 9 May 2021, 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. R M Commercials Ltd holds a standard national goods vehicle operator's licence (OD1143939) for five vehicles and five trailers. There are three vehicles in possession. The licence was granted (originally in standard international form) on 18 May 2016. The sole director of the company is Richard Morrin. The nominated transport manager on the licence is Richard Morris.

May 2018 public inquiry

2. In May 2018 the company attended a public inquiry following which I suspended the operator's licence for 28 days and secured the company's agreement to have an independent audit of compliance carried out by 31 October 2018. In coming to my written decision of 25 May 2018 I found that the operator had used a vehicle fitted with an AdBlue emulator, had been without a transport manager for most of its life (successive transport managers had arrived and departed very quickly – the operator was already on its fourth in two years), had virtually no systems for monitoring drivers' hours and had high MOT failure and roadside prohibition rates.

3. I found that director Richard Morrin had taken an “insouciant and over-confident” approach at the public inquiry but concluded that I could – just – trust him to comply in the future. I accepted the nomination of Derick Lewis as transport manager, subject to him providing his original CPC. This he subsequently did.

Further information

4. On 23 November 2018 my clerk emailed the operator to ask that the audit, due by 31 October, be now forwarded to my office. There was no reply. On 3 December she emailed again, asking for the report to be submitted by 11 December. Mr Morrin replied on 11 December, stating that he had that day applied to join the RHA which had agreed to fast track an audit. He stated that he would be in touch when he had a firm date. Nothing further was heard until 27 February 2019, when Mr Morrin emailed to say that the audit had been arranged for 10 April. He trusted that would be acceptable.
5. At my behest, my clerk requested an explanation as to why the audit had taken so long to arrange. Mr Morrin replied that “this is nothing more than operational delays within our own office”. He had been awaiting an audit date from the RHA but they had been awaiting a completed membership form from him.
6. Unimpressed by this explanation, I decided to recall the company to a public inquiry. In the meantime there had been other developments:
 - i) on 27 July 2018 the central licensing office in Leeds received a letter from Derick Lewis, the man presented to me at the public inquiry as R M Commercials Ltd’s new transport manager. He advised that he was no longer the transport manager, having decided not to take up the position. He had left the company on 6 July 2018 (only six weeks after the public inquiry) as he and Richard Morrin “don’t seem to be thinking along the same lines”. On 3 August 2018 the central licensing unit wrote to the operator stating that a new transport manager must now be nominated. The nomination of Steven Morris was received on 29 August 2019. His qualification was for national transport only: at the subsequent request of the operator the licence was downgraded to standard national from international. Mr Morris was the operator’s fifth transport manager since May 2016;
 - ii) on 9 November 2018 the operator’s vehicle AR62 CAN was stopped at the roadside and given a delayed prohibition for excessively corroded brake discs on both the near and offside wheels of axle 2. The trailer the vehicle was drawing was given an immediate prohibition for a seriously deflated tyre (only 18 PSI). Transport manager Steven Morris notified my office of the prohibition relating to the trailer, but not the one relating to the vehicle;
 - iii) on 18 December 2018, Gill Clayton, Senior Environmental Crime Officer at the Environment Agency, wrote to me to say that the EA had been investigating the activities of one Nathan Jones in connection with various waste offences. R M Commercials Ltd had been renting or leasing vehicles to Mr Jones and EA officers had visited the company on 8 August 2018 and spoken to Mr Morrin. Mr Morrin had refused to give them details of the vehicles leased to Jones or his business association with him. The EA had then served a formal notice under Section 71 of the Environmental Protection Act 1990 requiring R M Commercials to provide these details. Mr Morrin had failed to respond and on 20 September the EA had issued a letter confirming that the Section 71 notice had not been complied with. Ms Clayton drew this failure to my attention as she considered it should have implications for the operator’s repute.

Second Public Inquiry

7. In the light of the operator's failure to arrange a timely audit, and of the other issues described above, I decided to hold a further public inquiry. The call-up letter was issued on 5 March 2019 citing Sections 26(1)(c)(iii) and (f) and 27(1)(a) of the 1995 Act. Transport manager Steven Morris was requested to attend but his repute was not at stake.
8. The inquiry took place in Birmingham on 2 April 2019. Present were director Richard Morrin and transport manager Steven Morris. The company was represented by Harry Bowyer of Smith Bowyer Clarke solicitors.

Evidence of Richard Morrin

9. Mr Morrin accepted that he had not contacted the RHA about an audit until after receiving the second chaser letter from my clerk dated 3 December 2018. He had not had further contact to arrange the date of the audit until 25 February 2019. He understood that he should have given this greater priority. He was now serious about compliance and was determined not to have to appear at a public inquiry again.
10. He added that he had now replied to the Environment Agency's request for information.
11. I noted that Mr Morrin's track record on delivering his promises was poor. My written decision of 25 May 2018 had noted that Mr Morrin had told DVSA vehicle examiner Hopwood that he would be purchasing a decelerometer brake testing device but that in the end he had not done this. The reason Mr Morrin had given me at the inquiry was that he had decided to invest in a roller brake testing facility instead. Had Mr Morrin done this? Mr Morrin replied that he had not. I asked whether Mr Morrin had taken on IRTEC qualified staff, as he had said at the 2018 inquiry he was intending to do. He replied that he had not.
12. Mr Morrin had told me at the 2018 inquiry that, pending the purchase of roller brake testing equipment vehicles were being given roller brake tests by an outside provider. However, I noted from the vehicle safety inspection sheets that vehicles were not regularly been given a metered brake test: they were merely being road tested with "all good" the invariable result. I noted only two rolling brake tests records over the last 12 months for the three vehicles on the licence: one dated 14 November 2018 for vehicle AR62 CAN which had been necessary to clear its prohibition; and a second dated 11 January 2019 for vehicle PO15 UPC. This fell far, far short of the rosy picture of regular roller road brake testing which had been painted for me at the May 2018 public inquiry.

Evidence of Steven Morris

13. Mr Morris said he would shortly be attending a two day transport manager CPC refresher course. He also had his own operator's licence. He would be devoting around 14 hours per week to the R M Commercials licence. He was serious about getting things right. From a brief examination, Mr Morris appeared to me to have a reasonable grasp of the requirements of a transport manager, just as Derick Lewis had done at the May 2018 inquiry.

Concluding remarks

14. Summing up, Mr Bowyer accepted that there had clearly been some failings regarding the operator's undertakings. But the operator had benefitted from advice from Intransco, a respected transport consultancy, and now had well maintained compliance files. Vehicle files were up to date and in order. There was evidence that the operator had made efforts to improve since the last public inquiry. The forthcoming RHA audit on 10 April 2019 would give a fuller picture and suggest some

areas for improvement. The operator was not perfect but it did not deserve to go out of business.

Considerations

15. In paragraph 20 of my decision of 25 May 2018 I stated that I had seriously considered revoking the licence as a result of the “severe to serious” non-compliance I had found. I narrowly concluded that the operator could be trusted to comply in future. Had I known that

- i) Mr Morrin would fail to arrange the audit by the deadline which he agreed at that inquiry, and fail to meet that deadline, despite reminders, by more than five months;
- ii) that assurances of regular roller brake testing of vehicles would prove worthless;
- iii) that Mr Morrin would fail to co-operate with the Environment Agency’s legally binding request for information;

I would have revoked the licence there and then.

Findings

16. I make the following findings:

- i) the operator has failed to fulfil its undertaking to have an independent compliance audit conducted by 31 October 2018, and has failed by a huge margin, the audit having still not been carried out by the date of this decision (Section 26(1)(f) of the 1995 Act refers);
- ii) the operator’s vehicles have incurred further prohibitions (Section 26(1)(c) (iii) refers);
- iii) the company’s assurances about improvements to brake testing and to the qualifications of maintenance staff have proved worthless. I can no longer have confidence in any statement of intent the company, and Richard Morrin in particular, might make. This persistent failure to carry out its assurances means that the company can no longer be considered to be of good repute (Section 27(1)(a) refers);
- iv) in refusing to co-operate with legitimate requests from the Environment Agency, the company has further shown itself not to be of the necessary good repute.

17. I accept that the new transport manager has made some improvements to compliance. But Mr Morris is the fifth transport manager in less than three years: the others were either absentees or were unable to work with Mr Morrin and left quickly. I have no confidence that things will be any different in the end with Mr Morris.

18. The answer to the *Priority Freight* question of how likely it is that this operator will comply is “unlikely”. I gave the operator the benefit of the doubt at the May 2018 inquiry only to see Mr Morrin proceed to ignore the undertaking he gave and ignore the less formal assurances he gave on roller brake testing. I commented in my May 2018 on his insouciance over matters of compliance: that insouciant tone was there again when he explained away his failure to arrange an audit as “nothing more than operational delays.” I no longer have confidence in him to deliver on any of his promises. A negative answer to the *Priority Freight* question suggests a positive answer to the *Bryan Haulage* question: does the operator deserve to go out of

business? In this case, the operator's main business is vehicle leasing so it is unlikely to do so. But to go out of business as an operator of HGVs would be an entirely merited outcome.

Decisions

Operator licence

19. Having concluded that the company is not of good repute and cannot be trusted to comply with its undertakings, I am revoking the licence under Section 26(1)(f) and 27(1)(a) of the 1995 Act. The revocation will take effect on 9 May, to give time for the company to wind down its HGV operations.

Disqualification - director

20. For the reasons outlined in paragraphs 15 to 18 above, and having performed the same balancing act described therein, I conclude that Richard Morrin deserves to be disqualified under Section 28 from holding a licence in the future. 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 the operator's second within a year) and a period of between five and ten years where an operator has allowed drivers to falsify records or deliberately put safety at risk. Mr Morrin does not fall into the second category. I consider that a disqualification period of two years is proportionate, appropriate, and in line with the STC's guidelines. Such a period would allow Mr Morrin to step back from the industry, undertake training and, most importantly of all, undergo the necessary change of attitude towards the safe operation of vehicles.



Nicholas Denton

Nicholas Denton
Traffic Commissioner
9 April 2019