



IN THE SOUTH EAST METROPOLITAN TRAFFIC AREA

PUBLIC INQUIRY

under the Goods Vehicles (Licensing of Operators) Act 1995

OK0218905

**MICHAEL JOHN TURRELL
T/A M.T. SERVICES**

TRANSPORT MANAGER – RONALD GANDER

BEFORE

**ANTHONY SECULER
DEPUTY TRAFFIC COMMISSIONER**

**HEARD AT THE OFFICE OF THE TRAFFIC COMMISSIONER,
IVY HOUSE, EASTBOURNE BN21 4QT**

ON

30TH MAY 2019

Decision

1. The licence for Michael John Turrell, trading as MT Services, is revoked under Section 26 and Section 27(1)(a) of the Act with effect from 00.00 on 23rd June 2019.
2. Michael John Turrell is disqualified from holding or obtaining an operator's licence for two years with effect from 00.00 on 23rd June 2019 under Section 28 of the Act.
3. Ronald Alfred Gander, (5.6.42), has lost his good repute as a Transport Manager and he is disqualified indefinitely from acting as a Transport Manager on any operator's licence. I set no specific rehabilitation measure.

Background

1. Michael John Turrell, trading as M.T. Services (“the operator”), is the holder of a Standard National Operator’s Licence, issued on 19th July 1994, authorising the use of 3 vehicles and 1 trailer.
2. On 27th February 2018 the operator was called to attend a public inquiry before Traffic Commissioner Sarah Bell when the licence was suspended until the following terms were satisfied and the following decisions were made:
 1. Preventative Maintenance Inspections on the 2 specified vehicles, including a laden roller road brake test with a print-out attached which confirms that the test has been passed...The PMIs must not be conducted by the current maintenance contractor.
 2. Mr Michael John Turrell receives bespoke training both in terms of his drivers’ hours and maintenance systems together with general business approach (similar to Operator Licensing Awareness Training) for at least 4 hours from a competent person.
 3. Mr Michael John Turrell... shall receive a minimum of half a day training on walk round checks and vehicle maintenance, from a competent person.
 4. The Operator nominates an external transport manager available for not less than 3 hours per week in the prescribed manner.
 5. On a finding of loss of repute and a finding that he is unfit to manage the transport activities of an undertaking, Mr Michael John Turrell is disqualified from acting as a Transport Manager for an indeterminate period.
 6. Undertakings : The authorised vehicles shall have a laden roller brake test at every PMI, with the brake efficiency percentages endorsed on the PMI sheet and the print-out attached, which confirms that the test has been passed.
3. The operator had previously attended public inquiries on 21st July 1992 and 28th October 1996. Warnings had been issued by the Traffic Commissioner in October 2002 and November 2006 (overloading conviction).
4. In April 2017 Prohibitions were issued for 2 Immediate defects (load security and tyre bulging) and 4 delayed items. He was also issued with a prohibition in respect of insufficient weekly rest.
5. The Traffic Commissioner in her February 2018 decision described the follow-up DVSA investigation as revealing “a woeful catalogue of non-compliance across the licence undertakings”. She went on to state, “It is untenable that the drivers hours analysis was non-existent, there were no Preventative Maintenance

Inspection sheets and no written defect reporting system. It is unacceptable that there remain issues today, which still strike at the heart of road safety”.

6. On 20th March 2018 following the receipt of various documents, the suspension was lifted.
7. On 20th August 2018 the operator was issued with an “Immediate” prohibition in respect of a serious wheel loss incident on the A24. The prohibition related to road wheels missing on the outer and inner rear axle 3 and wheel studs missing. The prohibition was “S” marked to indicate a “significant failure in the maintenance system”.
8. A follow-up maintenance investigation on the 23rd November 2018 was marked as “unsatisfactory” in respect of:
 1. Defects in driver walk round checks,
 2. No continuing professional development for transport manager,
 3. Absence of rolling road brake tests,
 4. Absence of wheel re-torque programme
9. As a result of the above failings the operator was called to a public inquiry along with his transport manager, Mr Ronald Gander.

The Public Inquiry

10. At the public inquiry the operator attended represented by Mr Locke, Solicitor.
11. The Transport Manager, Mr Ronald Gander, did not attend. He had contacted the Office of the Traffic Commissioner seeking to resign his appointment with effect from 15th May 2019. He was warned that a decision against his repute might be made in his absence.
12. DVSA Vehicle Examiner Philip Roff attended to confirm the contents of his public inquiry statement. His evidence was not disputed and I adopt the contents of his statement for the full factual background.
13. Evidence was heard from VE Roff, the operator and his prospective Transport Manager, Ryan Waddingham-Horsley.

Findings of Fact on the Evidence

14. I make the following finding of fact on the evidence:
 1. The wheel loss incident on the 20th August posed a real and serious risk of death or injury to road users including the operator. Whilst the operator has suggested that there may have been outside interference with the wheel nuts, the absence of an effective, recorded wheel torquing procedure and persistent defects in the driver daily walk round checks mean that the

operator cannot satisfy me that he had taken all reasonable steps to prevent such an occurrence.

2. The operator states that the DVSA examiner at the roadside was at a loss to explain the incident. The operator states that the vehicle only drove 7-9 miles with the loose wheel nuts. VE Roff stated that in his professional opinion the elongated holes in the metalwork suggested a period of some 50 miles. Having regard to my findings regarding the operator's credibility, I cannot rely on his account of another VE's comments and I prefer the evidence of VE Roff as to the likely duration of the defects.
3. The operator failed to comply with the specific undertaking added to the licence in February 2018, "The authorised vehicles shall have a laden roller brake test at every PMI".
4. Written representations submitted on behalf of the operator stated that the undertaking was "misunderstood" and that the operator "erroneously believed that he was required to carry out roller brake testing four times a year in line with DVSA guidance". Nevertheless he failed to even comply with that requirement. The tests on one vehicle were carried out in February and March 2018, in order to lift the suspension. The next test was not until August 2018 and there was a further gap until the end of April 2019 before the next. In respect of the other vehicle, there was a gap between April 2018 and January 2019.
5. The written representations sought to explain the "misunderstanding" by stating that the operator did not receive the March 2018 public inquiry written decision. I reject that explanation for the following reasons: Firstly the written decision confirmed an oral decision which would have been directed at Mr Turrell. Secondly, Mr Turrell was represented by experienced transport consultants who would have discussed the decision with him. Thirdly, the operator admitted to me at this Inquiry that he had received the written decision.
6. The operator had failed to implement an effective driver defect reporting system. The list of failed items at MOT and the inspection sheets produced show a large number of driver reportable defects that should have been identified and rectified prior to use.
7. The operator failed to engage a Transport Manager in accordance with the terms and conditions of a written, signed contract submitted in order to have the 2018 suspension lifted. In fact, the operator stated in his evidence to me that there was no written contract with Mr Gander the Transport Manager, suggesting that the written agreement was just a device to lift the suspension. Clearly the cash-in-hand arrangement and the irregular contact with an unqualified, untrained Transport Manager would not have been sanctioned by the Traffic Commissioner. I note that Mr Gander states in his resignation letter that he never even discussed the wheel loss incident with the operator and the Vehicle Examiner found no evidence of the Transport Manager's

input on any of the records, nor was he present at a pre-arranged investigation, suggesting nil or negligible management of the licence. This situation was clearly acceptable to the operator but an abuse of the trust placed in him by the Traffic Commissioner.

8. Having observed and heard from the operator at the Inquiry, I found him to be inconsistent, unimpressive and lacking in credibility. I refer to the contradictory evidence about his knowledge of the Public Inquiry decision/undertakings and his admission about the Transport Manager contract which he had denied existed. I accept that he may have been nervous in giving his evidence at the Inquiry but the papers show his willingness to submit other documents (wheel torquing procedure and Transport Manager Monthly Check Sheets) which fall by the wayside or are never implemented.

Decision and Reasons

15. I weigh in the balance the positive features as far as they exist for this operator:

1. Maintenance inspections have taken place and were generally complete;
2. Some rolling road brake tests had been carried out but not in accordance with the undertaking;
3. A wheel torquing policy and record had been produced from 27th November. This should have been in place following the February 2018 Public Inquiry;
4. The operator had attended training;
5. The operator had engaged Mr Waddingham-Horsley as a prospective replacement Transport Manager. Although recently qualified and without experience as a Transport Manager he impressed in his evidence to the Public Inquiry and he appears an able and reputable individual.

16. Mr Waddingham-Horsley had produced an audit report dated 20th May 2019. Whilst I give the operator some credit in allowing this “warts and all” report to be submitted, it does demonstrate just how far short of compliance the operator remains. There are reds indicating high levels of risk across the categories of; driver defect reporting, vehicle files (“they do not appear to be well maintained”), driver licensing, and, the overall rating is 49.46% compliant, again a red rating.

17. This is an operator who has failed to heed the most clear and loud wake-up calls. I cite the main ones here just to highlight the number of opportunities that this operator has had to take stock and finally address the deficiencies in his compliance regime:

- The DVSA encounter and prohibitions in April 2017;
- The DVSA maintenance and tachograph/drivers’ hours investigation in June 2017;

- The wheel-loss incident in August 2018;
- The Public Inquiry in February 2018 and the suspension arising therefrom;
- The wheel-loss incident in August 2018;
- The DVSA maintenance investigation in November 2018;
- The call to Public Inquiry in April 2019.

18. In February 2018 the operator was represented by experienced transport consultants who provided him with bespoke training on maintenance and drivers' hours systems, defect reporting and on Operator Licence Awareness. The fact that clear deficiencies, as detailed in the Audit report and records produced to this Inquiry, still exist in all those areas confirms the Traffic Commissioner Sarah Bell's doubts "I am not satisfied that even an intensive 2 day refresher course (as a Transport Manager) will assist Mr Turrell to operate compliantly". Similarly, no amount of training as an operator will ensure an operator obeys the rules if the motivation and commitment is not there which is the case with Mr Turrell.

19. Grounds for action against this licence are made out under:

- (i) Section 26(1)(c)(iii) – prohibitions;
- (ii) Section 26(1)(ca) – fixed penalties;
- (iii) Section 26(1)(f) - Failing to honour undertakings signed up to when the licence was applied for and, specifically, at Public Inquiry in February 2018.

20. In addition, I consider the inconsistencies in the operator's evidence, the failure to honour clear undertakings and the lies about not having received the Public Inquiry decision, fatal to his good repute as an operator under Section 13A(2) and Section 27(1) of the Act.

21. Turning to the important preliminary question set out by the Upper Tribunal in the case of *Priority Freight Ltd & Paul Williams (2009/225)*; "How likely is it that this operator will, in future, operate in compliance with the operator's licensing regime?", the answer in this case is "most unlikely". I refer in particular to the missed opportunities cited above.

22. With regard to the *Bryan Haulage (No. 2) (2002/217)* question; "is the conduct such that the operator ought to be put out of business?" the extent of the operator's failings taken with his recent history lead to a firm "yes" to that question.

23. There is no doubt in my mind that Mr Turrell poses a real and serious risk to road safety as an operator. It is only good fortune that the wheel-loss incident did not result in serious injury or a fatality yet even that did not cause him to take stock

of his arrangement with his unqualified transport manager and implement meaningful changes.

24. His Solicitor represented to me that Mr Turrell is “getting there”. Firstly, that is still not good enough. Secondly, as at the date of this Inquiry, as borne out by the Audit Report and the documents produced, there is still a long way to go. Thirdly, even if Mr Turrell with the assistance of Mr Waddingham-Horsley “gets there” in the short term, I have no confidence he would maintain the level in the medium or long term.
25. I have been told that Mr Turrell would have engaged X-Ray Management Support Services in February 2018 had they been available but that does not justify waiting until this Public Inquiry before arranging proper professional assistance.
26. At the conclusion of the 2018 Public Inquiry Traffic Commissioner Bell gave the clearest warning to Mr Turrell; “There is no room for any more behaviour which undermines the integrity of the operator licensing system. I have given Mr Turrell a further chance as an operator and his fate is now firmly in its own hands”.
27. Even without that warning I conclude that any further chances for this operator would undermine the credibility of the system and pose an unacceptable risk to public safety.
28. I have carefully considered whether with an undertaking to retain Mr Waddingham-Horsley as Transport Manager the licence could be retained. Apart from the fact that he has no previous experience as a Transport Manager, Mr Waddingham-Horsley appeared conscientious and able. However, I consider it inappropriate and unfair to base the licence’s fate solely in the hands of a newly qualified Transport Manager.
29. It is inappropriate because when the Upper Tribunal talks of the importance of trust as one of the foundation stones of operator licensing (Fenlon 2006/277) it is trust in the operator to comply with all relevant laws, rules and regulations. The Fenlon decision explains the rationale; “because it would be a physical and financial impossibility to police every aspect of the licensing system all day and every day”. This principle applies to the Transport Manager who would be engaged for three hours per week leaving the operator to his own devices for the rest of the working week.
30. It is also inappropriate to rely on the good repute of the Transport Manager to substitute for a finding of total loss of good repute for the operator. The Fenlon case also describes the risk to the public if some operators believe that others are obtaining an unfair commercial advantage by ignoring laws, rules and regulations.
31. I also consider it unfair to tie this Transport Manager (even if the operator continued his engagement and complied with his directions which I very much doubt) to the operator for the foreseeable future. However, I accept that Mr Waddingham-Horsley confirmed his willingness to act.

32. The licence for Michael John Turrell, trading as MT Services, is revoked under Section 26 and Section 27(1)(a) of the Act with effect from 00.00 on 23rd June 2019.
33. The calling-in letter warned of the risk of disqualification if the licence was revoked. Having considered the operator's lack of good repute (including allowing false representations to be made in submissions), serial non-compliance and real and serious risk to road safety, I consider it appropriate and necessary to disqualify Michael John Turrell from holding or obtaining an operator's licence for two years with effect from 00.00 on 23rd June 2019 under Section 28 of the Act.
34. Ronald Alfred Gander, (5.6.42), has been served with notice of this Public Inquiry to consider his repute and professional competence. He has patently failed to carry out constant and effective management of this licence and he fails to attend to offer any explanation or assurances.
35. Mr Gander was qualified by acquired rights and there is no evidence of him having taken any steps to update his professional knowledge in order that he might carry out his duties to modern-day standards. He was prepared to be engaged on a cash-in-hand basis and there is no evidence of his input to compliance on this licence. I find that he has lost his good repute as a Transport Manager and he is disqualified indefinitely from acting as a Transport Manager on any operator's licence. I set no specific rehabilitation measure.

Anthony Seculer,
Deputy Traffic Commissioner,
South East Metropolitan Traffic Area.
2nd June 2019