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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)

JLM EUROPEAN LIMITED
OC2002517

&

WILLIAM MORRITT
OC2006707

Public Inquiry held at Golborne
on 18 June 2019

Decisions

JLM European Limited

On findings under s.26 (1) (c) (iii), (ca) and (f) of the Act together with S.27 (1) (a) of the Act in respect of repute and financial standing, I revoke this operator's licence with effect from 23:59 hours on 30 June 2019.

Jamie Morrirt as a TM

I hold back from making a finding in respect of his repute as a TM at this time. I do not propose in current circumstances to require that he come before me, unless he should seek appointment as a TM on any other operator's licence, when it will be appropriate to revisit these matters before any application is made by him.

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William Morritt

On findings under s.26 (1) (c) (iii), (ca), (e) and (f) of the Act, I revoke this operator's licence with effect from 23:59 hours on 30 June 2019.

Background

1. **JLM European Limited (OC2002517)** (hereafter JLM) is the holder of a Standard International Goods Vehicle Operator's Licence for 3 vehicles, 3 trailers, which I had granted on 4 July 2017. The sole director at the time of grant was Jamie Lee William Morritt, who was also its Transport Manager (TM).
2. The licence was granted subject to a single undertaking as follows:
 - *The operator undertakes that William Morritt (born March 1954) will play no part whatsoever in the operation of this business.*
3. **William Morritt (OC2006707)** is also the holder of a Standard International Goods Vehicle Operator's Licence for 3 vehicles, 3 trailers, which was granted by Deputy Traffic Commissioner (DTC) Beverley Bell on 8 December 2017. William Morritt acts as his own TM.
4. That licence was also the subject of undertakings, three in number, as follows, which this sole trader had agreed to:
 - *A business bank account will be set up by 28th March 2018 and the necessary monies be transferred into a dedicated account for the licence that he is operating to show evidence of financial standing;*
 - *Mr Morritt is to join either the RHA or FTA;*
 - *The RHA, FTA or external consultant, will conduct an Operator's Compliance Audit by the 30th September 2018. The audit report will be sent to my office at Golborne by 31st October 2018 and will be reviewed by the Traffic Commissioner, Simon Evans, or myself. In addition, I personally will review the file in 12 months, at the end of November 2018.*

Regulatory History

5. The involvement of William Morritt and his son, Jamie Morritt in businesses with operator's licences that have come before the regulator is quite substantial.
6. Jamie Morritt had been made subject to a period of disqualification from holding or obtaining an operator's licence for 12 months, ending on 12 December 2016, consequent on his role as a director of Transfreeze Limited.
7. I heard his application in mid-2017 for the JLM European Limited licence. I restored his repute. I had noted his successfully passing of the TM CPC examination, that he had undertaken a refresher and that he had been ready to agree to an undertaking that William Morritt play no role whatsoever in his business. I concluded he had "rehabilitated" himself.

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8. William Morritt had been a director of Transfreeze Limited (OC110971) and of Morritt International Limited (OC0277612), both of which licences were revoked. His good repute was forfeit and he was disqualified from holding or obtaining an operator's licence for 18 months, ending on 12 May 2017 (the period of disqualification and the date of it being affected by appeal processes followed).
9. It was against this background that the DTC came to consider William Morritt's application for his current licence back in 2017. In the written confirmation of her oral decision, the DTC referred to William Morritt's "chequered history", his lack of honesty at an earlier hearing, and that Jamie too had demonstrated a similar trait. She referred to an appeal in which bias against him by the same commissioner was alleged (but which was not found to have merit). Nevertheless, she was prepared to grant the new licence. She gave credit for his openness and honesty at the hearing, for making the application in timely fashion and for making her aware that Jamie had had a licence granted for his own company, JLM European Limited. She took account of William Morritt's health and personal family circumstances and the effect that these had had upon him.
10. She set down the three undertakings (which I have repeated at paragraph 4 above) and explained her expectations in that regard to him. She indicated an intention personally to review compliance in November 2018, making it clear that non-compliance would lead to Public Inquiry.
11. She attached a formal warning to the grant, acknowledged his attendance on an OLAT course and that William Morritt had "learnt the error of (his) ways", telling him that he had "a lot more to lose this time than last time round". Finally, she reminded him that if any undertakings were not met that he must write in to explain why that was.

The call to Public Inquiry

12. The calling-in of the company licence of JLM European Limited arose from three matters:
 - a) First that the undertaking on the licence which had excluded William Morritt from "playing any role whatsoever" in the operation of the company licence had been breached. On 28 February 2019, William Morritt had been specified in the Companies' House record, as a person with significant control over JLM European Limited, in replacement of Jamie Morritt. And on 23 May 2019, William Morritt had been appointed as a director on the JLM licence;
 - b) The operator's licence had been the subject of DVSA encounters, which had led to prohibitions – one for a trailer and one for a vehicle; both were immediate and referred to safety critical matters of loose wheel nuts on separate occasions. Fixed Penalty Notices had been issued for drivers' hours matters x 2, an overweight vehicle (over 1 tonne excess) and an offence prohibition for a tachograph not properly fitted;
 - c) The MOT failure rate on first presentation was found to be worse than the national average.

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13. The calling-in letter for JLM referred to prohibitions, fixed penalties and breaches of undertakings in respect of deployment of fit and serviceable vehicles and un-notified directorial change. Notice was given that the repute, financial standing and professional competence of the operator was brought in to question. Jamie Morritt was served in respect of his repute as a TM.
14. The calling-in of the sole trader licence of William Morritt was triggered by three matters:
- a) First, a maintenance investigation carried out by Vehicle Examiner (VE) Ingram, which carried a “mostly satisfactory” outcome. Amongst his findings were an absence of CPD for William Morritt in his TM role, some record keeping discrepancies, an absence of brake testing at preventative maintenance inspections, some stretching of maintenance frequencies for 2 vehicles and 2 trailers, a forward planner that was not comprehensive and that variety of unnotified maintenance contractors were in use;
 - b) It also became clear to my office that the undertaking, in which the operator had agreed to commission for an independent audit of licence compliance in September 2018, with a report provided by 31 October 2018 had not been met (and remained unmet);
 - c) The operator’s vehicles had been involved in DVSA encounters leading to three prohibitions, each immediate and concerning two trailers and a tractor unit – each on a separate occasion. The licence attracted two fixed penalties for tachograph or drivers’ hours offences, and three offence prohibition notices, again for drivers’ hours matters. A 50% first time MOT failure rate was recorded, albeit on a sample of two vehicles only.
15. The calling-in referred to prohibition notices, fixed penalties and undertakings breached. Unusually, it raised material change in terms of fitness and financial standing, more commonly such matters are raised in respect of restricted operator’s licences. Grounds under Section 27 of the Act were not raised: the reasons for that are unclear. Neither was William Morritt called in his role as TM. I noted that repute and professional competence were raised in the Case Summary and the requirement to produce evidence of financial standing was included in the call-in.
16. In view of the absence of formal notice being given, and in fairness to him I make no findings in respect of good repute or professional competence, or in respect of William Morritt as TM.

The Public Inquiry

17. So it was that Jamie and William Morritt were called before me at Public Inquiry on 18 June 2019 at Golborne. In their capacities as directors of JLM, and as TM for respective licences.
18. No one was present for the start of the Public Inquiry at 10.00am, although I was aware that there was to be an attendance as an e-mail from JLM’s solicitors,

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Backhouse Jones had been received the previous week, although it notified that William Morrith would attend but represent himself at the hearing.

19. William Morrith appeared later having been held up in traffic. Whilst he had with him maintenance and driver's hour's paperwork for vehicles operated by both concerns, he had not brought any evidence in the form of bank statements for either JLM or his own licence. Such evidence should have been provided 7 days before any hearing.
20. Jamie Morrith was not present. [REDACTED]. No application for adjournment was made, no sick note was produced and since William Morrith was now a director of JLM, I decided to proceed, as he was therefore able to represent the interests of both concerns.
21. The evidence I heard from William Morrith and my consideration of it, can be conveniently separated into the following paragraphs focussing on the main themes of the hearing.

Financial Standing

22. Subsequently, but during the hearing, my clerk was assisted to obtain relevant financial evidence, when William Morrith logged into JLM's bank account. A calculation was completed but I found that on calculation the requirement was not met. JLM could show evidence on average of £[REDACTED] against a requirement of £16,900: sufficient for no more than one vehicle.
23. I was told that a Euro VAT refund of sums exceeding €[REDACTED] was expected but no date for its receipt was indicated to me, nor was any paperwork supporting that claim substantiated.
24. A period of grace to meet financial standing was not sought. In any event, I did not find that there was a clear basis for extending one to the operator.
25. As to William Morrith's sole trader licence, whilst I was told a bank account for the business existed (it was an undertaking given on grant), it was admitted that there was no money in it.

Operation of businesses

26. William Morrith indicated that he had not been proposing to attend the hearing. He could not afford legal representation. He told me JLM had lost a lot of work in the early part of 2019.
27. When it was pointed out that all documentation produced was in the name of JLM, although one vehicle was nominated on each operator's licence, William Morrith admitted that his licence was in fact operating "under the wing of JLM". He confirmed that the businesses had been combined, which he realised was a problem. I noted that both businesses were now co-located on the Airfield Industrial Estate at Ashbourne.

The undertakings for William Morrith to have no role on the JLM licence

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28. William Morritt admitted that foolishly he had regarded this undertaking as less important than he now knew it to be. He apologised but offered that the decision to become the majority shareholder, a director and to work in the business had been designed to protect it from [REDACTED].

Compliance with other licence undertakings re maintenance and driver's hours

29. Before I reviewed records produced, I asked William Morritt whether they would be likely to show the arrangements were compliant. I was told maintenance frequencies would be timely and that evidence of improvement concerning drivers' hours compliance could be demonstrated, with any failing drivers acted against.

30. My subsequent review disclosed some limited evidence of maintenance intervals being stretched (7 weeks for FX65 KKW). Brake testing evidence though, was largely absent and when undertaken was of diminished value as the tests were each conducted unladen. A note to that effect appeared on each brake test report. For reasons that were unclear, the maintenance record for FX15 HMU was duplicated with slightly different data on each report. There was evidence of a further unnotified contractor, Roy Fox, being used to inspect vehicles and in-house checks carried out by William Morritt, despite the weight that DTC Beverley Bell had attached to external maintenance arrangements.

31. I was told that several vehicles had been sold or were presently for sale. Discrepancies raised about maintenance were not satisfactorily explained.

32. My review of driver infringement reports showed notable breaches. Excluding the high volumes of overspeed and working time directive breaches, these drivers' hours matters totalled 47 such matters in a 5 month period with 15 examples of taking less than minimum daily rest, 4½ hour infringements (13) and exceeding the daily drive limit (5). Driver Clarke was a repeat offender over the whole period.

William Morritt's undertaking to obtain an independent audit on his sole trader licence

33. William Morritt's explanation for the absence of an independent audit was that he believed that since DVSA had undertaken a maintenance inspection in July 2018 that this negated the need for him to arrange an audit. He now accepted that this view was held in error for which he offered apologies. It was noted however, that no attempt had been made subsequently to correct the position, albeit late.

Findings

34. I am satisfied on the balance of probabilities:

- i. Financial standing is not met for neither JLM nor the William Morritt licence;
- ii. That there is an intermingling of activity such that it cannot be said that two separate licences are being run. All activity is under the JLM umbrella, albeit that vehicles are specified under both licences;
- iii. The bespoke undertaking on the JLM licence, which excludes the involvement of William Morritt has been, and continues to be breached.

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Jamie Morritt will have been fully aware of the requirement having been present, when the decision was made but he ignored it. Inability for any reason to comply with an undertaking requires disclosure;

- iv. William Morritt's appointment as director was never notified as a material change;
- v. It is also clear from the narrative of the written decision, which was issued at the time of the grant of the sole trader licence that William Morritt knew of the restriction. I am satisfied that the Morritt's have placed personal interest ahead of licence compliance;
- vi. Most preventative maintenance inspections were timely, brake testing requirements by contrast have rarely been met;
- vii. Drivers' hours breaches have not been addressed in all cases and where action has been taken (Driver Moran) this has been too slow;
- viii. There is considerable evidence of prohibitions, offence prohibitions and fixed penalties on both licences;
- ix. The bespoke undertaking for an independent audit agreed to by William Morritt has been ignored. I totally reject the argument that he could conclude that a DVSA investigation could be a suitable proxy for an audit. For a man so long involved in the haulage industry to offer such an excuse in belief it might be accepted is incredible.

35. I note that William Morritt invites that I accept the surrender of the sole trader licence in order to regularise the position, where vehicles are already operated under the JLM banner. I find that the circumstances in which this has arisen are too serious to take such a course.

36. I further note his assurances for the future but cannot help but remark such expressions about future compliance were offered before but proved hollow.

37. Similarly, whilst I have sympathy for the difficult background of personal and family circumstances in recent years that William Morritt told me about, again I note previous decisions have reflected those same (or similar) factors. I judge that the point has been reached where the weight I can to those factors is substantially diminished.

38. As the Upper Tribunal has accepted on very many occasions, the regulatory regime is based on the trust and confidence the Traffic Commissioner can have in operators, whether individuals or company directors. Those who have agreed undertakings when being granted their licences must comply with them. The original narratives on the brief (parts of which were set out above) plainly put both Jamie and William Morritt on notice that the undertakings were significantly important.

39. I find regulatory trust in the operator has been undermined so that it is lost. So much so that when I ask myself in respect of both of these licences whether I can have confidence that there will be compliance in the future, I find the answer is

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patently in the negative. Through failure to comply with undertakings, I have been deprived obtaining the assurance that road safety and fair competition will be maintained.

40. When I go on to ask myself if these are operators which now must be removed from the industry, I find that the answer is yes. The history of the involvement of both Jamie and William Morritt is significantly adverse. They have failed to take opportunities offered by granting of licences in 2017. Whilst William Morritt's deceptively straightforward and perceptive acceptance that he "needs to be more in line than I would seem to be" is an attractive analysis, I can only conclude it is superficial and highly unlikely to be achieved. Promises whether for attendance on TM refresher programmes or about realising that things must be different are not persuasive.

41. Both directors and JLM are manifestly without repute.

Decisions

42. The operator's licence of JLM European Limited

On findings under s.26 (1) (c) (iii), (ca) and (f) of the Act together with S.27 (1) (a) of the Act in respect of repute and financial standing, I revoke this operator's licence with effect from 23:59 hours on 30 June 2019.

Such short a period will enable vehicles already in Europe to return to base and for an orderly closedown of the business.

43. Power to disqualify the company and directors

Provisionally I find that it is appropriate that I disqualify both the operator and William Morritt from holding or obtaining an operator's licence.

In the absence of Jamie Morritt, and in order to provide him with the opportunity to make representations about disqualification as a director, partner or sole trader in writing, or if he wishes, to do so orally in front of me, I do no more than indicate my intention in this decision.

I shall fix the relevant periods for both directors and for the company, once Jamie Morritt has provided a response, for which I allow a period of 4 weeks from the date of decision.

I indicate that I welcome written representations from William Morritt too, or that he be allowed to appear before me, if he so wishes in relation to proposed disqualification.

44. Jamie Morritt as a TM

I hold back from making a finding in respect of his repute as a TM at this time. I do not propose in current circumstances to require that he come before me, unless he should seek appointment as a TM on any other operator's licence, when it will be appropriate to revisit these matters before any application is made by him.

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45. The operator's licence of William Morritt

On findings under s.26 (1) (c) (iii), (ca), (e) and (f) of the Act, I revoke this operator's licence with effect from 23:59 hours on 30 June 2019.

Such short a period will enable vehicles already in Europe to return to base and for an orderly closedown of the business.

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

Simon Evans
Traffic Commissioner
for the North West of England
20 June 2019