



CLARKS CARAVAN & BOAT HAULAGE LTD: OH1073895

MATTHEW DAVID COOPER t/a COO-MATT HAULAGE: OH1054385

TRANSPORT MANAGERS:

**KEITH DAVID BUTE
MATTHEW DAVID COOPER**

PUBLIC INQUIRY IN BRISTOL, 27 JUNE 2019

DECISION

The Goods Vehicles (Licensing of Operators) Act 1995 (the “Act”)

Pursuant to findings under Sections 27(1)(a), financial standing, professional competence and good repute, licence OH1054385 Matthew David Cooper is revoked with immediate effect and, pursuant to Section 28 of the Act, Mr Cooper is disqualified from holding, or being involved in the management of, an operator’s licence until 15 February 2020.

Following a finding of loss of good repute as transport manager, Matthew David Cooper is disqualified from acting as such in any member state until 15 February 2020.

Pursuant to findings under Sections 26(1)(c), 26(1)(f) and 27(1)(a), good repute, licence OH1073895 Clarks Caravan and Boat Haulage Ltd is revoked with effect from 23:59, 17 August 2019.

Pursuant to Section 28 of the Act, Clarks Caravan and Boat Haulage Ltd, Martin John Clark and Paul Simon Clark are each disqualified from holding, or being involved in the management of, an operator’s licence for a period of 1 year with effect from 17 August 2019

Pursuant to a finding of loss of good repute as transport manager, Keith David Bute is disqualified from acting as such in any member state for a period of three years and until he sits and passes again his transport manager CPC examination.

I provide a period of grace of 3 months for licences PH1131232 and PF1067354 to operate without professional competence. Applications to add transport managers to those licences will need to come before a Traffic Commissioner within that time to ensure that the arrangement is proper. Note that this implies no criticism of the operators involved.

BACKGROUND

1. Clarks Caravan & Boat Haulage Ltd (“Clarks”) is the holder of a standard international operator’s licence, valid since October 2007, authorising the use of four vehicles and four trailers from an operating centre in Lee-on-the Solent with four vehicles recorded as in possession. The directors are Martyn John Clark and Paul Simon Clark. The current transport manager is Jeffrey Keating who took up post in February this year. His predecessor was Keith David Bute. The licence has significant compliance history with a warning letter issued in 2009 for a conviction and a professional competence and maintenance-related public inquiry in June 2010 when the licence was curtailed from five to four vehicles and trailers indefinitely. A further maintenance-related public inquiry took place in October 2014 and December 2014 when the licence was suspended for nine days. Martyn Clark and Keith Bute were required to undertake refresher training.
2. Matthew David Cooper (“Cooper”) is the holder of a standard national operator’s licence, valid since February 2006, authorising the use of two vehicles and two trailers from Marchwood, Southampton. Mr Cooper is also transport manager. There is no compliance history.
3. On 12 October 2018, DVSA Traffic Examiner Elizabeth Ferrie encountered vehicle V8EXC at the roadside, driven by Luke Treviss. Mr Treviss confirmed that he was working for Cooper. The vehicle was weighed and found to be overloaded by over five tonnes.
4. On 15 November 2018, DVSA Traffic Examiner Amy Comer encountered vehicle V8EXC at the roadside, again driven by Luke Treviss. Mr Treviss confirmed that he was working for Clarks, although Miss Comer noted that the operator’s licence disc in the window was that of Cooper. Mr Treviss produced a fuel card as proof that Clarks was paying for the fuel. Examiner Comer downloaded the vehicle unit and Mr Treviss’ digital driver card. This showed a number of apparent driver’s hours offences. An interview took place with the driver where he explained that he had also been stopped by DVSA on 12 October where it was found his vehicle was overloaded, although on that day he was working for Cooper.
5. Company director Martyn Clark informed Miss Comer at the time of the encounter that an arrangement was in place with Matthew Cooper in relation to the work and the vehicle, but that the Operator was paying for the vehicle’s running, upkeep and fuel.
6. Ms Comer followed up with the operator. Analysis of tachograph records identified further offences in relation to driver and co-director Paul Clark. Ms Comer found management systems to be basic and there was no record of driver debriefing of infringements found. In interview, Paul Clark explained that his role was primarily driving and Martyn Clark acted in the director role. Ms Comer also interviewed Mr Cooper who provided some documentation relating to apparent vehicle hire between the two operators. Mr Cooper acknowledged that he had not been using his own operating centre for about a year, instead parking at Clarks.
7. Paul Clark was subsequently convicted and fined £416 for exceeding 10 hours driving with no separate penalty for two other offences; Luke Treviss was

convicted and fined £300 for failing to take weekly rest with no separate penalty for three other offences of exceeding 4.5 hours driving. He was also fined £510 for the overloading offence.

8. Ms Comer concluded that, in her view, Clarks used Cooper's licence to operate over authority. She was further concerned at the apparent lack of control exerted by Clarks' transport manager Keith Bute.
9. Matthew Cooper submitted a licence surrender form in December 2018. No licence documents or discs were returned with it. The ongoing investigation made in inappropriate for me to accept surrender.
10. TE Comer's report caused me to call Clarks to public inquiry in the following terms:

Section 26(1)(c)(i) and (ii) of the Act, that the operator or its drivers had incurred relevant convictions in the past five years;

Section 26(1)(c)(iii) of the Act, that the operator or its drivers had been issued with relevant prohibition notices;

Section 26(1)(ca) of the Act, that the operator or its drivers had been issued with fixed penalty notices;

Section 26(1)(e) of the Act, that the following statements made when applying for the licence were either false or have not been fulfilled:

- that the operating centre would not be used by any other operator

Section 26(1)(f) of the Act, that the following undertakings made when applying for the licence have not been honoured:

- that vehicles and trailers would not be overloaded
- that the rules on drivers hours and tachographs would be observed
- that you would not exceed your operating centre authorisation

under Section 26(1)(h) of the Act, that there had been a material change in the circumstances of the licence holder namely the operation of more vehicles than authorised;

under Section 27(1)(a), that the operator may not have a stable establishment, be of good repute, of the appropriate financial standing or meet the requirements of professional competence;

under Section 27(1)(b), that the operator may not have a transport manager who is professionally competent and of good repute.

11. I called Cooper to public inquiry as follows:

Section 26(1)(a) of the Act, that the operator was operating from an unauthorised operating centre;

Section 26(1)(b) of the Act, that the operator failed to notify events which affect good repute, financial standing or professional competence;

Section 26(1)(c)(i) and (ii) of the Act, that the operator or its drivers had incurred relevant convictions in the past five years;

Section 26(1)(e) of the Act, that the following statements made when applying for the licence were either false or have not been fulfilled:

- that vehicles would normally be kept when not in use at the nominated operating centre

Section 26(1)(f) of the Act, that the following undertakings made when applying for the licence have not been honoured:

- that vehicles and trailers would not be overloaded
- that relevant maintenance records would be kept for 15 months and made available on request

under Section 26(1)(h) of the Act, that there had been a material change in the circumstances of the licence holder namely the use of an unauthorised operating centre;

under Section 27(1)(a), that the operator may not have a stable establishment, be of good repute, of the appropriate financial standing or meet the requirements of professional competence;

under Section 27(1)(b), that the operator may not have a transport manager who is professionally competent and of good repute.

12. Mr Keith Bute and Mr Matthew Cooper were called separately to consider their repute as Transport Managers under Schedule 3 of the Act.

THE PUBLIC INQUIRY

13. Mr Martyn Clark and Mr Jeffrey Keating attended for Clarks. Matthew Cooper attended as operator and transport manager. Keith Bute attended as former transport manager. No party was represented.

14. Mr Cooper submitted in advance a copy of his bankruptcy order which took effect on 15 February 2019. Both Mr Bute and Clarks submitted evidence bundles.

15. Proceedings were recorded and a transcript can be produced as required. I do not record all the evidence here, only that which is necessary to come to a decision.

16. Since no party was legally represented, I confirmed that each was aware of the possible outcomes of the day. I received no request for an adjournment and proceeded with the inquiry.

17. Mr Cooper offered no financial evidence. Clarks demonstrated financial standing on the papers. No discussion on financial matters was therefore required.

The evidence of Matthew Cooper

18. Mr Cooper told me he had been a driver for Meachers until 2006 when he decided to set up on his own. He had worked as a sub-contractor for a range of hauliers, including Clarks, until November 2018. Towards the end, everything had become depleted and he had more bills than money. He estimated around £20,000 was owed to the Crown. Both his trucks had developed expensive problems and he had sold them. Clarks had two spare lorries and he leased them. His own insurance had lapsed so he left the vehicles insured by Clarks. He drove one vehicle and Luke Treviss drove the other. Martyn Clark had also driven one of the vehicles.
19. Mr Treviss was paid by Clarks. Work was contracted through Clarks. Mostly the work was passed to him by Martyn and he would then allocate it to Mr Treviss. The overload was a bridge section for Mitchell Bridges. Their contract was with Clarks. The overload occurred because Mitchell Bridges had included four 2.5 tonne concrete blocks and Mr Treviss hadn't realised that would take him over weight. He was still learning the job.
20. The vehicles' tax, insurance, fuel, work and drivers salary were all provided by Clarks. Kenneth Clark (no familial link with the operator), who is Clarks' listed maintenance provider, undertook maintenance. The PMI sheets were left in the vehicles.

The evidence of transport manager Keith Bute

21. Mr Bute told me that he had been a fire officer for twenty years and had a second job as a driver. He had progressed to take his transport management exam and take on transport management work. He now ran a consultancy and training business. He would act as a transport manager on new licences generally whilst the licence holder had themselves become qualified. He told me about two other operators for whom he was acting as transport manager. N&K Tours was Nigel and Kim who operated one coach on international tours. He saw them once a month to do downloads. The vehicle was a luxury Scania Irizar coach.
22. Barry Deakin operated a fleet of six minibuses working on a regular contract in Watford. Mr Deakin's wife runs it on a day-to-day basis for him. She did not want to sit the CPC exam herself. It was regular runs, about four hours driving a day and the drivers had no other employment. He visited the operator every two weeks.
23. He met Martyn Clark through a mutual acquaintance, Phil Conner, a previous transport manager for Clarks. Mr Conner had moved on and Mr Bute took over the transport manager role. For about a year, Martyn Clark had not wanted to deal with him direct and everything was done through Jimmy Clark, a driver. Jimmy did the downloads. I asked Mr Bute what role he had in assigning loads; he told me he had none. There had been a plan to apply for an increase in

licence authority and Mr Bute had advised Martyn to wait until the necessary financial standing could be established. He visited the operator about once a month. He didn't know that Luke Treviss had been employed as a driver for a year. Prior to the DVSA investigation, he had no knowledge of the hiring arrangement with Cooper.

24. Most of his contact was via text messages to Jimmy. He would text Jimmy every month to give dates of PMIs and to get the downloads. He generally saw the PMIs within a week or two of them being done, sometimes it might be a month. They had moved to using Kenneth Clark, a mobile fitter, following problems with other contractors. He had suggested to Martyn that they change maintenance provider again. The under-vehicle facilities were jacks, some of the trailers were low-loaders. Mr Bute accepted that this posed challenges in relation to undertaking effective inspections.
25. Mr Bute and his office were experienced at transport management. He was aware of how he had failed. He intended never to be in the same position again.

The evidence of Matthew Clark

26. Mr Clark told me that he had started the business with his brother about ten years ago. The work was mostly mobile homes and boats in UK and Europe. They had recently won a new contract for the bridge work.
27. Hiring the vehicle had been Mr Cooper's idea. Clarks had agreed to pay for everything. It was a similar arrangement to, say, Pentalvers or Maritime. The work would be sub-contracted to Mr Cooper. If he could not reach Mr Cooper, he might contact Mr Treviss direct. That was what had happened on the occasion when Mr Treviss worked seven consecutive days. By paying for the insurance, he knew the vehicles were insured.
28. I asked why the business had spare vehicles in possession. Mr Clark told me that they had been updating the fleet so they could go in to London. He knew Mr Cooper was having problems, they had a chat and the arrangement just went from there. The arrangement was to pay a daily traction rate. No examples of invoices were available.
29. Mr Bute would come in monthly if at all. They would speak most weeks. I took Mr Clark to the decision from his 2010 public inquiry in which it was stated
 - 5) *The good repute of the Operator Company has been tarnished by the failure of its directors to enable and require the transport manager to act as the Operator Company's transport manager other than in name only until April 2010*
30. Mr Clark told me the situation with Mr Bute was far better than that which existed in 2010.
31. Maintenance was done by Kenneth Clark. There was no pit but he had all the necessary tools and he worked under cover. The PMI sheet was given to the driver who would leave it in the car for collection.

32. Mr Clark told me that, now that Jeff (Mr Keating, the new transport manager) was on-board, things were much better. Jeff is the boss. Both directors were attending an operator licence awareness course next month. Driver CPC had been dealt with and tachograph training was being booked. The office was being moved to be co-located with the operating centre which would provide better supervision of drivers. The move was in the next week or so. In terms of regulatory action, revocation would be the end of the business. They could not cope with a two-vehicle curtailment. In relation to a suspension, summer was the busiest time. All four people in the business had young families to support.

The evidence of Jeffrey Keating, Transport Manager

33. Mr Keating had been a transport supervisor at Loomis responsible for forty vehicles. His consultancy, FCS, was in its infancy. He had set it up with his business partner who had experience of trouble-shooting business problems. They were still finding things out. They wanted to give Martyn more time. There had been improvements and there would be more in the next six months.

CONSIDERATION AND FINDINGS OF FACT

The hiring arrangement

34. Some facts were not contested. The two vehicles involved belonged to Clarks. They were taxed, insured fuelled and maintained by Clarks. All the work came from Clarks. Driver Treviss was on Clarks payroll. The purported hire agreement states that it includes “maintenance, servicing, fuel, tax, drivers wages”. The evidence of Mr Treviss in interview under caution is that “Martyn” was his boss. Mr Treviss described Mr Cooper as merely another driver. It is accepted that Mr Clark directed the work of Mr Treviss personally on 19 October 2018 when he drove for the seventh consecutive day. Mr Cooper played no part at all in the activities that day. On the balance of probabilities, I find without hesitation that Mr Treviss was a servant of Clarks on 20 October 2018, on 15 November 2018 (when he was encountered by TE Comer) and, again, more likely than not, on every day in between and before and after.

35. The “user”, or operator, of a goods vehicle is defined in Section 58 of the Act:

(2) For the purposes of this Act, the driver of a vehicle, if it belongs to him or is in his possession under an agreement for hire, hire-purchase or loan, and in any other case the person whose servant or agent the driver is, shall be deemed to be the person using the vehicle; and references to using a vehicle shall be construed accordingly.

36. Having found that Mr Treviss was a servant of Clarks for the period 20 October 2018 until 15 November 2018, at least, and was displaying a disc in the name of Cooper, I find that Clarks was loaning a disc and licence authority to operate more vehicles than authorised. My finding here is strengthened by that fact that both Mr Bute and Mr Clark told me that there had been an intention at, or around, that time to make a variation application to increase licence authority and that application had not been progressed due to the inability, or believed inability, to demonstrate the necessary financial standing. Use of the Cooper

licence circumvented the due process and provided Clarks with a clear and unfair commercial advantage over compliant operators.

37. TE Comer believes that the hire agreements were drawn-up after she had spoken to Martin Clark from the check-site on 15 November 2018. That is a serious allegation of fraudulent behaviour and, as such, requires strong evidence to support it. Whilst the hire arrangement itself, at least in relation to the vehicle driven by Mr Treviss, is clearly fundamentally deficient and unlawful, I have no actual evidence to support a finding that the document itself has been manufactured after the event. I proceed on the basis that the document was in place.
38. I turn now to the arrangements in place for the vehicle driven by Mr Cooper. Having accepted that the vehicle hire document was in place, I look to see whether it was, in practice, a vehicle that was hired to Mr Cooper to undertake work as a legitimate sub-contractor to Clarks. I am disturbed by the lack of supporting evidence, even in the two large ring binders provided by Clarks. In particular, there is no financial evidence. The hire agreement does not include a price for the hire. There is no cross-invoicing evident between the two businesses. No reconciliation of costs. It seems to me that, if Mr Cooper was actually operating the vehicle in his own business, it would be highly unlikely to be covered by the insurance of Clarks even if he was engaged in sub-contracting to Clarks. If Mr Cooper was operating, he would need his own insurance so that he could operate for anyone. It should have been relatively easy for the parties to demonstrate that the appropriate invoices were raised and, through provision of bank statements, that they were actually paid. Copies of Clarks' company accounts would presumably show income from vehicle hire. I am not even provided with evidence that Clarks owns the vehicles or is otherwise lawfully permitted to hire them to a third party.
39. It is possible that some or all of this evidence might exist. The call-up letter includes the following, on the first page *"You should identify competent legal or professional help and representation quickly, unless you are confident you do not need it. These are serious matters. Your licence and therefore your business are at stake."* I pointed this out to all parties at the beginning of the hearing and all were content to proceed. I can only conclude that the evidence to support hiring does not exist and so the hiring arrangement is a sham. I therefore find, on the balance of probabilities but in reality I am in no doubt, Mr Cooper was actually working as a servant of Clarks and, separately, lending his licence authority. It follows that I find that Clarks was operating six vehicles, two, or fifty percent. over authority.

Arrangements for maintaining the vehicles in a fit and serviceable condition

40. There is no significant adverse history in relation to Cooper and maintenance was not a feature of his call-in. It is rather confusing that his test history includes two prohibition clearance inspections yet the record shows that there have been no prohibitions. The prohibitions appear on the licence of Clarks, and that includes the one issued to V8EXC on 12 October 2018, the overloading incident involving driver Treviss. It would seem that the Traffic Examiner believed that Cooper was the operator whereas the Vehicle Examiner at the same check found it to be Clarks. A prohibition to V8EXC on 14 March 2018 also appears on Clarks' licence and the clearance on Cooper's.

41. Clark's fitter has no means to conduct anything approaching a meaningful underside inspection. This is worsened due to some of the trailers being low-loaders with very little access underneath. Proper under vehicle inspection facilities are a basic requirement of DVSA's Guide to Maintaining Roadworthiness. In the positive, there has been a period between the end of 2015 and March 2018 in which no prohibitions were incurred. Last year appears very poor with prohibitions for tyres, seat belts, exhaust system, horn and ABS. It is notable that three were issued at annual test or at a prohibition clearance inspection when the vehicle or trailer will have been prepared for the inspection. This is a clear indicator of poor quality pre-inspections.
42. The maintenance documentation is average to poor. Not all declarations of roadworthiness are signed-off, although I have found no evidence of defects not being repaired. There are roller brake tests but they are undertaken either with no, or very little, weight. A roller brake test for trailer C310155 on 10 June 2019 records service brake performance as an impressive 109% but closer scrutiny identifies that the total axle weight (TAW) has been incorrectly input in to the computer as 4000kg. It is actually 24000kg so the true efficiency calculates at 17.9%, which shows the absolute pointlessness of brake testing without a load (the legal MOT minimum is 45%). Transport managers are expected to notice such basic errors.
43. There is a proposal to move inspections to Brenhaul Commercials. The sample inspection sheets provided fall far short of meeting the standard set out in the Guide to Maintaining Roadworthiness. For example, there is no facility to record tyre tread depths or pressures, brake wear or driver-reportable defects. It identifies the HGV Inspection Manual item 58 as power steering when it is additional braking devices. But then it refers to the DOE Tester Manual which I believe would date the form between 1970 and 1976. The trailer inspection form does not even have a facility to record brake performance at all.
44. I find that there are serious deficiencies in the arrangements for maintaining vehicles in a fit and serviceable condition and, on the evidence provided, the proposed new maintenance provider continues those deficiencies.

Drivers hours and tachograph matters

45. Two drivers have been convicted of drivers hours offences. They are not the most serious but neither are they trivial, having passed the public interest test threshold for prosecution. A third driver also had offences but they did not meet the prosecution standard. Driver Treviss drove for seven consecutive days which is the most basic of failures. He also had committed several offences of driving over 4½ hours without a break, in the order of 30 – 60 minutes. One offence of driving 7 hours 16 minutes appears more attributable to breaks having been taken but they were too short.
46. Driver and director Paul Clark's offences were exceeding 10 hours daily driving by a further 1 hour 23 minutes, exceeding 9 hours driving by 23 minutes and exceeding 4½ hours driving by 31 minutes and again by 13 minutes on the same day.

47. The evidence from all the driver interviews points to a lack of any real management of infringements by the transport manager, or anyone else for that matter. Paul Clark states that the infringements were not discussed with him. He received a letter in the office that was signed, and that was the end of it. Driver Keith Jeffs reports a similar process.
48. Drivers hours management is an area where there appears to have been a major improvement this year. Proper analysis reports were included in the operator's bundle and the operator could answer detailed questions, for example, about apparent missing mileage on a day. Tracking has been installed.

Unauthorised operating centre

49. Clarks was in possession of, and I have found it was operating, six vehicles and the operating centre is authorised for four.
50. In the alternative, Cooper used Clarks operating centre for approximately a year.

Summary of findings against the Section 26 call-up legislation: Clarks

51. Two drivers of the operator have incurred convictions. Section 26(1)(c) is made out. One of the drivers is a statutory director and the convictions are for drivers hours matters so I attach additional weight to this finding.
52. There have been multiple prohibitions issued, many in just the past eighteen months. Section 26(1)(c)(iii) is made out.
53. One fixed penalty has been issued in 2015. Section 26(1)(ca) is made out but, given the passage of time, I attach no significant weight.
54. My finding is that the operation of all the vehicles has been by Clarks. It follows that the operating centre has not been shared. Section 26(1)(e) is not made out.
55. A conviction has been incurred for overloading by one of the operator's drivers driving one of the operator's vehicles on the operator's business. It was, at five tonnes, a very significant overload. Drivers have been convicted of drivers hours offences. Six vehicles have been operated from the operating centre. Section 26(1)(f) is made out. I attach significant weight.

Summary of findings against the Section 26 call-up legislation: Cooper

56. Having found that Cooper was not the operator of the vehicles, I cannot find that he has operated from an unauthorised operating centre. Section 26(1)(a) is not made out.
57. The operator failed to notify his financial problems. Section 26(1)(b) is made out.

58. Having found that Clarks was the operator of the vehicles, the operator and his drivers have not incurred convictions, Section 26(1)(c) is not made out. For the same reason, Sections 26(1)(e), (f) and (h) are also not made out.

Transport manager Keith Bute

59. Mr Bute asserts his competence as a transport manager citing his roles as examination supervisor and trainer. On his TM1 form in April 2013, Mr Bute set out his commitment to the role as follows:

Postcode: RG21 2MS

5. Which type of transport manager will you be for the licence(s) listed in section 27 (See note 5)

| | |
|----------|-------------------------------------|
| Internal | <input type="checkbox"/> |
| External | <input checked="" type="checkbox"/> |

6. How many hours per week will you spend on your transport manager duties? (See guidance note 6)

| | |
|-----------|----|
| Monday | |
| Tuesday | |
| Wednesday | 3 |
| Thursday | 4 |
| Friday | 4 |
| Saturday | 4 |
| Sunday | |
| Total | 15 |

2

60. In reality, he has attended the operating centre around once a month. He has dealt with a lead driver rather than a statutory director. He has done that by sending text messages. He has, during 2018 at least, made no realistic attempt to debrief drivers on infringements and has allowed a careless culture of non-compliance to fester. Maintenance arrangements are wholly unacceptable and he took no action to correct that. He bemoans the lack of cooperation from the operator but again has taken no action to address that. In 2003/58 J Cowan, in apparently very similar circumstances, the Transport Tribunal said the following:

“We think that the agreement to reduce hours reflects adversely on both M Cowan and Mr Fenny. The latter had accepted his position as transport manager and should have ensured that he did indeed do enough work so as to be able to comply with his duties. Instead of which he allowed himself to be used in name only. We regard the conduct of both Mr Cowan and Mr Fenny to have been a serious breach of their obligations.”

61. Mr Bute may not accept that he was transport manager in name only. However, he may wish to consider the following extract from EU Regulation 1071/2009 which describes the **minimum** statutory role of an external transport manager (Article 4(2)(b)):

the contract linking the undertaking with the person referred to in point (a) specifies the tasks to be performed on an effective and continuous basis by that person, and indicates his or her responsibilities as transport manager. The tasks to be specified shall comprise, in particular, those relating to vehicle maintenance management, verification of transport contracts and documents, basic accounting, the assignment of loads or services to drivers and vehicles, and the verification of safety procedures;

62. Mr Bute sought to manage maintenance by texting a list of PMI dates to a driver once a month. He would then request an explanation, again by text, if a vehicle missed its due date. He allowed inspections to be undertaken without proper facilities and, on the face of the prohibition history, to a poor standard. In relation to verification of transport contracts, he had no idea that the business was operating six, not four, vehicles. He knew nothing at all of the 5 tonne overload until two months later, whereas he should have been ensuring that contracted loads could be carried on the equipment used. He did not know that Luke Treviss had been employed, on a PAYE basis, for twelve months nor that some form of unsatisfactory arrangement had been entered into in order to facilitate operating at 150% of authorisation. In terms of safety procedures, there was no online checking of driver licences; any driver can have a piece of plastic, only online can its authenticity be verified. Text messages do not add up to continuous and effective management of a transport operation. He was, to all intents and purposes, transport manager in name only and it follows that his good repute is forfeit.

Good repute of Matthew Cooper as operator and transport manager

63. Matthew Cooper was declared bankrupt on 15 February 2019. A declaration of bankruptcy is a means, albeit unpleasant, of avoiding liabilities. In this case, that includes a very significant debt to the public purse. He colluded with Clarks to gain value from his operator's licence following the end of his own business. Whilst there may have been arguable, if flawed, grounds for him using his operator's licence on the vehicle he drove, there was never any plausible case for it being used on the vehicle driven by Clark's employee Mr Treviss. These are both serious matters and mean that Mr Cooper's good repute is forfeit both as operator and transport manager. I believe he accepts that.

64. Mr Cooper has his positives. There is no adverse compliance history in relation to his own operation prior to the arrangement with Clarks. He offered his licence for surrender once he was made aware that the arrangement was wrong. He notified, albeit late, that he had been declared bankrupt. Whilst his re-entry to the industry will face scrutiny and he will need to provide a proper and full explanation of the events leading to his bankruptcy, I keep the period of disqualification to the minimum by aligning it to the date on which his bankruptcy becomes discharged.

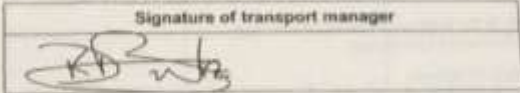
Good repute of Clarks Caravan & Boat Haulage Ltd

65. The maintenance, overloading and drivers hours matters would not of themselves lead to a finding of loss of good repute for the operator, although they do provide a backdrop of a culture of non-compliance. There are two

matters which do, though, go to the heart of the trust between regulator and operator. The first is the role of the transport manager. Martyn Clark was a signatory to the TM1 form, the extract of which is at paragraph 59 above.

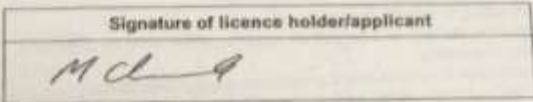
• Verifying contracts and documents;
• Basic accounting;
• Any other role in safety procedures.

Should I fail to meet any of the above requirements I understand that the traffic commissioner has the power to disqualify me from being a transport manager in any European Union country.

| | |
|---|----------|
| Signature of transport manager | Date |
|  | 16.04.13 |

14. Declaration by the applicant for the licence or the licence holder. (See guidance note 14)

I confirm that to the best of my knowledge and belief the details given in this form are correct.

| | |
|---|----------|
| Signature of licence holder/applicant | Date |
|  | 16.04.13 |

Print Name

Martyn Clark

Position in business

Director

Name of operator you are signing on behalf of

CLARKS CARAVAN & GOLF HALLAGE LTD.

66. He was fully aware that the commitment given in 2013 was very far from being adhered to. As the Transport Tribunal said in *Cowan*, that was a serious breach of his responsibilities. The lack of cooperation with the transport manager by not even notifying of the employment of an additional full-time driver means that I cannot trust the operator to comply.
67. Operating over authority through a sham hiring arrangement also goes to the heart of trust. The operator knew that its operating authority had been positively curtailed in 2010. In operating as it did, it circumvented that curtailment order and exceeded even the previous authorisation. The uncontested evidence of Mr Bute was that a variation application had been considered but financial standing at the time was problematic. So the operator found a way to circumvent that problem. It is notable that the operator's on-road compliance dipped considerably from the beginning of 2018 which aligns with the move to operating more vehicles.
68. In terms of the action to be taken and whether the operator has forfeit its good repute, I start by looking at the guidance to which I must have regard¹ and the directions I must follow. Annex 4 to Statutory Document 10 provides a starting point.
69. I judge the sham hiring agreement as a reckless and deliberate act which points towards a categorisation of "severe". I categorise the transport manager position in exactly the same way. Further, and as a direct result, there has been a persistent failure to analyse tachograph records such that drivers hours

¹ Senior Traffic Commissioner Statutory Document No. 10 "The principles of decision making and the concept of proportionality", December 2016

offences went unmanaged. Management of maintenance has been poor. The transport management arrangements have been the subject of a previous public inquiry. This is an operator who appears to struggle to learn.

70. The operator is not entirely devoid of positive features. Maintenance is taking place. There is brake testing albeit unladen. Latterly, there has been involvement from a new transport consultancy and the drivers hours analysis I viewed seemed mostly sound. If I could trust the operator, it may be that it could turn the corner. But this is the operator's third public inquiry. And this time, the operator has exhibited a severe lack of trustworthiness. Despite the action taken, the serious failings remain and I find that the categorisation remains "severe".
71. In balancing the positives with the negatives, I am assisted by the helpful questions posed by the Upper Tribunal to assist traffic commissioners in determining whether a licence should continue or whether some other, non-terminal, intervention is appropriate. The lack of honesty in circumventing the curtailment and operating at 150% of authorisation, and the use of a transport manager's name only, for the second time, inevitably leads me to find that the answer to the "Priority Freight"² question of how likely is it that this operator will, in future, operate in compliance with the operator's licensing regime, is "very unlikely".
72. If the evidence demonstrates that future compliance is unlikely then that will, of course, tend to support an affirmative answer to the "Bryan Haulage" question: is the conduct such that the operator ought to be put out of business? I understand the personal hardship that can cause and I take that in to account. But I must also consider the compliant operators who do constrain their operations to their authority and affordability, and who do employ effective transport managers. Having found that I cannot trust this operator, I do find that the behaviour is such that this is an operator that needs to be put out of business.
73. In relation to disqualification, I turn again to the statutory guidance and directions³. It reminds me, at paragraph 54, that, whilst there need not be an additional feature before a disqualification order is made, it is not automatic. In this case, the serious breaches of trust and the repetition of the transport management issue mean that the operator does need time to reflect upon what it means to hold a goods vehicle operator's licence. Whilst this is the operator's third public inquiry, it is the first time severe action has been taken so I keep the disqualification at the lower level of the starting point in the guidance.

DECISION

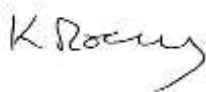
74. Pursuant to findings under Sections 27(1)(a), financial standing, professional competence and good repute, licence OH1054385 Matthew David Cooper is revoked with immediate effect and, pursuant to Section 28 of the Act, Mr

² Appeal 2009/225 to the Transport Tribunal

³ Senior Traffic Commissioner Statutory Document No. 10 "The principles of decision making and the concept of proportionality", December 2016

Cooper is disqualified from holding, or being involved in the management of, an operator's licence until 15 February 2020.

75. Following a finding of loss of good repute as transport manager, Matthew David Cooper is disqualified from acting as such in any member state until 15 February 2020.
76. Pursuant to findings under Sections 26(1)(c), 26(1)(f) and 27(1)(a), good repute, licence OH1073895 Clarks Caravan and Boat Haulage Ltd is revoked with effect from 23:59, 17 August 2019.
77. Pursuant to Section 28 of the Act, Clarks Caravan and Boat Haulage Ltd, Martin John Clark and Paul Simon Clark are each disqualified from holding, or being involved in the management of, an operator's licence for a period of 1 year with effect from 17 August 2019
78. Pursuant to a finding of loss of good repute as transport manager, Keith David Bute is disqualified from acting as such in any member state for a period of three years and until he sits and passes again his transport manager CPC examination.
79. I provide a period of grace of 3 months for licences PH1131232 and PF1067354 to operate without professional competence. Applications to add transport managers to those licences will need to come before a Traffic Commissioner within that time to ensure that the arrangement is proper. Note that this implies no criticism of the operators involved.



Kevin Rooney

**Traffic Commissioner
5 July 2019**