



**DECISION
OF THE TRAFFIC COMMISSIONER
FOR THE SOUTH EASTERN & METROPOLITAN TRAFFIC AREA**

**EDWARD BARRETT
OK2006461**

**PUBLIC INQUIRY
HELD AT EASTBOURNE
4th July 2019 at 10.00am**

Goods Vehicles (Licensing of Operators) Act 1995

Goods Vehicles (Licensing of Operators) Regulations 1995

Decision

1. Pursuant to adverse findings under Section 26(1)(b), (c)(ii), (c)(iii), (f) and (h) of the Goods Vehicle (Licensing of Operators) Act of 1995, **Mr Edward Barrett** no longer meets the mandatory requirement of Section 13B of the 1995 Act – fitness. Accordingly, licence OK2006461 is revoked with effect from 23:45 on 26th August 2019. The Licence suspension continues in the meantime.
2. **Mr Edward Barrett** is disqualified from holding or obtaining an operator's licence or being involved in the management, administration or control of an entity in Great Britain that holds or obtains a Licence for a period of 3 years from 23:45 on 26th August 2019.

Background

3. Mr Barrett attended a Public Inquiry (PI) before me on 18th January 2018 to consider his application for an operator's licence. The hearing was called for Mr Barrett to satisfy me on balance that:-
 - a) the application was not a 'front' for his father, John Christopher Barrett; and
 - b) that he had the requisite knowledge to meet the undertakings on a licence.
4. At the conclusion of that hearing, I granted the Licence for the reduced authorisation of 1 vehicle only and with a condition that Mr John Christopher Barrett shall have no role in the business whatsoever. I also received a few additional undertakings to ensure that:
 - o the vehicle would be maintained in a roadworthy condition;
 - o Mr Barrett would have the necessary external assistance in terms of knowledge; and
 - o Mr Barrett would also attend a seminar.

5. Subsequently my office became aware of a roadside encounter with the Metropolitan Police and a maintenance investigation by DVSA which had an unsatisfactory outcome. Accordingly, I determined that Mr Barrett should be called to a further PI.

The Hearing

6. The hearing commenced and concluded in the Tribunal Room in Eastbourne (Ivy House, 3 Ivy Terrace, Eastbourne, BN21 4QT) on Thursday 4th July 2019. I heard oral evidence from Police Constable (PC) David Lascelles, Vehicle Examiner (VE) Christian Jones and Mr Barrett. At the conclusion of the hearing, I directed that Mr Barrett send to PC Lascelles the raw data for the driver cards belonging to Mr John Barrett and Mr John Donovan for the period 1st March 2019 – 1st June 2019 inclusive. PC Lascelles agreed to produce an addendum in terms of whether there has been any 'double driving' with analogue vehicles to assist this decision. I indicated that I would endeavour to conclude my written decision by Monday 5th August 2019.

The Issues

7. Mr Barrett does not dispute the oral & written evidence of DVSA and the Metropolitan Police. Accordingly, it falls for me to consider what action, if any, is appropriate.

Documents in Evidence

8. Prior to writing this decision I have reviewed the following:-
 - PI Brief;
 - Letter from my office to Mr Barrett dated 28th June 2019 attaching Section 9 statement from PC Lascelles dated 27th June 2019 and Memorandum of Convictions for John Christopher Barrett before the Willesden Magistrates' Court on 11th February 2019;
 - Email from the PI clerk to Mr Barrett dated 13th May 2019 attaching the call-in letter and confirming that the full PI brief had been sent by recorded delivery. Attached to the email are the proof of receipt for the PI bundle and the Additional Matters letter of 28th June 2019;
 - Print out of tachograph data report, company 'Grabco', last download as at 12th November 2018 vehicle PN08NWA ("PCPI 1");
 - PMI sheet and parts receipt for vehicle GN05NLX dated 4th May 2019 and brake tests for GN05HLX dated 7th February 2019 ("TCPI 1");
 - Email from the Property Acquisition Manager, HS2 Ltd to the VE dated 13th March 2019 ("TCPI 2");
 - Email from the VE to Mr Barrett dated 14th March 2019 ("TCPI 3");
 - Copy driving licence for Mr John Donovan ("EBPI 1");
 - Copy driving licence for Mr John Barrett ("EBPI 2").
 - My handwritten notes taken at the hearing.
 - E mail exchanges between my office, PC Lascelles, the VE and Mr Barrett after the hearing concluded.

- *South Bucks District Council and another V Porter(FC) (2004) UKHL33, English v Emery Reimbold & Strick Ltd [2002 EWCA Civ 605 and Bradley Fold Travel Limited & Peter Wright v Secretary of State for Transport [2010] EWCA Civ 695* in relation to written decisions generally;
- Upper Tribunal Decisions and other guidance I consider relevant to this determination as listed elsewhere in this Decision;
- The Senior Traffic Commissioner's Statutory Guidance and Statutory Directions

Consideration and Findings

9. Mr Barrett's Licence was granted after a PI before me on 18th January 2018. The basis upon which I decided to trust Mr Barrett is clearly set out in that decision (page 100 – 103 of the bundle). Mr Barrett has betrayed that trust in the following ways: -
- (1) Unauthorised use of an Operating Centre, which began shortly after the Operator's Licence was granted. This continues today as Mr Barrett has failed to lodge an application for any new operating centre. As a result, I suspended his licence at the end of the hearing pursuant to Section 26 (1)(a) of the 1995 Act as there was nowhere for lawful parking. The suspension was to continue until such time as an application was made and accepted by me. At the date of this Decision there is no advert or paper application (online unavailable during the suspension). Accordingly, that aspect has been dealt with as a discreet issue in terms of the unauthorised operating centre itself, but it is still relevant in terms of Mr Barrett's fitness to hold a licence.
 - (2) Mr Barrett has permitted his father, John Christopher Barrett, to be involved in the business, particularly by regularly driving the specified vehicle. This is a breach of a condition on the Licence agreed at the PI.
 - (3) It is an aggravating feature that his father did not have the appropriate vocational driving entitlement for the 32-tonne vehicle when driving it between June and November 2018 inclusive.
 - (4) Since the Licence was granted there have been numerous drivers' hours' infringements by Mr John Christopher Barrett which led to convictions in February 2019. The conviction includes the offence of driving otherwise than in accordance with a licence.
 - (5) Prohibitions have been issued at a roadside encounter and at an announced fleet inspection.
 - (6) At the maintenance investigation on 18th February 2019, Mr Barrett could not produce any Preventative Maintenance Inspection (PMI) sheets. He failed provide an explanation to the Examiner at the time. In his written response, Mr Barrett told the Examiner that documents had been stolen from the vehicle over the evening of 12th/13th November 2018 (I return to this later). However Mr Barrett has failed to explain, even today, why he did not subsequently produce to the Examiner the PMI sheets for GN05HLX. There should have been two PMI sheets for that period whether on a 6 weekly or 8 weekly cycle, bearing in mind the vehicles first specified on 25th November 2018.
 - (7) At the maintenance investigation, only driver defect sheets from the 23rd January 2019 were available and they were incomplete. The condition of the vehicle on 12th November 2018 and 18th February 2019 indicates that drivers were not doing effective walk-round checks as both prohibitions include defects obvious to a driver.

- (8) Mr Barrett has breached the undertaking for the vehicle to have a laden roller brake test at every PMI. He admitted that he had not arranged these (save one on the 7th February 2019, which was not to PMI standard). He could not explain why he had failed to organise this.
- (9) The PMIs produced at the PI are on an 8 weekly cycle when the notified cycle is 6 weekly. Further, the tyre pressures are not being checked at the PMI.
10. It is also disappointing that Mr Barrett failed to produce evidence of financial resources prior to 28th May 2019 as clearly required in the call-in letter. He had no explanation for this other than he simply did not see it. When I asked him why he had therefore brought the correct finance today, he said the Transport Consultant had told him to do so.
11. I now turn to Mr Barrett's failure to bring the PI bundle to the hearing. I had to delay the start by 45 minutes because Mr Barrett said he did not receive the PI bundle. Mr Barrett did have a copy of the call-in letter with him. He confirmed that he had received the letter in the post. He did not receive anything by e mail because he had failed to notify his change of e mail address. My PI clerk confirmed that the procedure is that the call-in alone is sent by email and then the call-in and bundle are sent together by recorded delivery. It follows that Mr Barrett must have received the letter – and thereby the PI bundle - through the recorded delivery process. The PI bundle and Additional Matters letter were clearly signed for at the business premises. Further the business premises are professional serviced offices as opposed to, for example, a porta cabin in a yard. Therefore, on balance I find that those papers were received together at that office. Mr Barrett had full notice of the serious matters before the PI.
12. Mr Barrett's bank statements are not those of a formal business. Most receipts are in cash and all the payments out are of an entirely personal nature. There is not one payment out that would indicate a business account. Mr Barrett told me that he pays for everything in cash except for the vehicle tax, which is paid on a debit card. This appears at odds with his personal payments which are predominantly paid by card – even £2.46 in Tesco...
13. Mr Barrett did not bring any evidence to the PI to demonstrate who is operating the vehicle, even though possible 'fronting' for his father remains a live issue. Whilst not specifically required in the call-in letter, personnel files for each driver showing a copy of a recently checked driver licences, driver declarations etc. would have been evidence, as would evidence of training or disciplinary action taken to show him as a compliant operator. This is referred to on page 4 of the call-in letter (page 12 of the bundle). Likewise, invoices for maintenance and driver wage slips would have assisted. At the same time, the lack of evidence is in accordance with Mr Barrett's general failure to prepare for the PI.
14. I return to the question of the statutory maintenance records allegedly stolen from the vehicle PN08NWA overnight 12th/13th November 2018. Mr Barrett assures me that the PMIs for the vehicle were in his laptop bag in the vehicle parked outside Yeading Test Station. The VE confirmed that he was at Yeading Test Station on 13th November 2018 and one of the vehicle windows had been smashed. He could not say, however, if anything had been stolen. I asked Mr Barrett why he would remove the original PMIs from his serviced office, put them in a laptop bag and leave them in a vehicle when he was working on site that day. Mr Barrett could not provide a specific reason but guessed that he might have checked the records in between jobs. On assessing the credibility of this stolen records explanation, I must also take in to account the following: -
- i) There is no crime reference. Mr Barrett tells me of a few different telephone numbers he was given to call to no avail, but he did not think to go to the local police station.
 - ii) He did not give the explanation to the VE at the time of the fleet inspection.

- iii) He did not write to my office in Leeds or Eastbourne to advise of the theft, even though he knew that undertakings had been given specifically in relation to the maintenance of the vehicle.
 - iv) It is the same explanation given by his father in relation to missing records in 2016.
15. Mr Barrett assured me that he has received advice and guidance from his Transport Consultant since the Licence was granted. I reminded Mr Barrett that:
- o he had been at an unauthorised Operating Centre for at least a year;
 - o he had not complied with the undertaking in relation to brake testing;
 - o there are numerous issues in relation to other compliance such as the driving licences and hours offences.

I asked for assistance in what exactly the Consultant had been helping him to do. Mr Barrett was unable to assist me.

16. In an e mail dated 11 July 2019, PC Lascelles confirmed that digi data received after the hearing did not show any 'double up' with the analogue charts. However, the data supplied showed that of the 3 driving days for Mr Donovan, infringements occurred on 2 of those days - in May 2019. The Transport Consultant also confirmed that she did not know a Martin McDonagh and had never been asked to download his digi card. In relation to the analogue charts taken from the PI, none of the drivers were using the mode switch, there were numerous centerfield errors and one instance of a clock wind back. At PI, Mr Barrett said that he had sold PN08NWA (removed from the Licence on 25/11/18) for scrap. PC Lascelles subsequent enquiries found no such evidence. The vehicle was insured from 29/1/19 to date by John Christopher Barrett and John Donovan drove the vehicle on 15 May 2019 (with no VED in force as it expired on 1 December 2018). John Christopher Barrett is also the policyholder for current vehicle GN05HLX (both vehicles are on the same policy). Vehicle GN05HLX had no valid VED since 13 July 2017.
17. In a reply dated 22 July 2019, Mr Barrett says he was told that vehicle GN05HLX was taxed when he took possession. This is not credible because VED does not transfer with a vehicle and he first took possession around 19 February 2018 (see page 8 of the bundle) – well over a year ago. Mr Barrett does not provide an explanation for the police findings regarding PN08NWA. Mr Barrett says that the insurance is in his father's name as insurance in his own name is expensive, without addressing the implications for the lawfulness where his father has no operator's licence.
18. Having had the opportunity to observe Mr Barrett and listen to him give evidence, I do not find him a credible witness. When I tested his evidence in relation to the PI bundle, the bank statements, missing/stolen PMI records and general compliance, his account simply did not fit the circumstances. The huge number of failings across the board, strongly rebut any suggestion of meaningful involvement by a professional Transport Consultant until just before the PI. The explanation as to not having a crime reference is wholly implausible bearing in mind it is standard police procedure when a crime has been reported. Whilst there is evidence that the vehicle windows were smashed on 12th/13th November 2018, the suggestion that all PMI sheets from January 2018 were in a laptop bag left in the vehicle, on a street, is not plausible. There is simply no contemporaneous evidence of this as a fact and I have already found Mr Barrett is not a credible witness. The balance of evidence, and indeed omissions, is that those documents simply did not exist or if they did they were not in a fit state to be produced. For the same reasons, I do not accept his explanations in the e mail dated 22 July 2019. Accordingly, I find that the condition in relation to John Christopher Barrett and the general and specific undertakings have been systemically breached.

19. There are some positives in this case. Mr Barrett did attend the DVSA New Operator Seminar. There are also improvements here today in terms of the maintenance system, albeit mainly after receipt of the call in letter. There are current PMI sheets with a Certificate of Roadworthiness signed off. There are fewer driver reportable items at PMI, which indicates that the driver defect reporting system now appears to be working. However, the forms are still not being completed correctly e.g. drivers not putting their full time and sometimes only 'nil' ticked rather than a tick next to each item to positively confirm the item was checked (even on 3 July 2019). Further, even as we sat in the PI room the undertaking in relation to roller brake testing simply was not being met.
20. In his e mail dated 22 July 2019, Mr Barrett states: "*This process has made me realise that I have not used the correct people when I should have. I have been made more aware of my responsibilities as an operator and understand the need to have someone with knowledge help me run compliantly. Nothing that was found during the investigations were deliberate attempts to be non compliant. I am young and have learnt from this experience and hope to have shown that I am willing to change and I need my business to continue*". It is as if the hearing in January 2018 never happened. Mr Barrett was given advice and guidance and limited to one vehicle to prove himself. He has spectacularly failed.
21. When I pose the question, helpfully suggested in 2009/225 Priority Freight Ltd and Paul Williams, how likely is it that this operator will, in future, operate in compliance with the operator's licensing regime, the answer must be that I cannot be satisfied on balance that he will be. Most of the steps taken in my decision of 18th January 2018 to ensure road safety, fair competition and the best possible chance of Mr Barrett succeeding have been disregarded. The behaviour of Mr Barrett in the last 18 months has been unconscionable. His lack of candour at the PI tells me that any improvements immediately before the PI are unlikely to be sustained.
22. Although this is a restricted Licence, I do consider it appropriate in the circumstances of this case, to ask the question '*is the conduct of the operator such that the operator ought to be put out of business*' as per 2002/217 Bryan Haulage No.2. In my judgement the answer is 'yes'. Mr Barrett's approach to road safety and fair competition shows a high degree of recklessness. Revocation may or may not put the Barrett family out of business, but it should at the very least seriously curtail their ability to operate profitably. Accordingly, I have reached the decision set out in paragraph 1 above.

Disqualification

23. I have reminded myself of the helpful guidance on disqualification from the Upper Tribunal summarised in paragraph 58 of the Senior Traffic commissioner's Statutory Guidance and Statutory Directions No. 10 on the Principles of Decision Making and Proportionality:

Disqualification is a potentially significant infringement of rights and the Upper Tribunal has indicated that whilst there is no 'additional feature' required to order disqualification it is not a direction which should be routinely ordered. There may be cases in which the seriousness of the operator's conduct is such that a traffic commissioner may properly consider that both revocation and disqualification are necessary for the purposes of enforcing the legislation. The provisions are in general terms, consistent with the concept of deterrence, but assessment of culpability and use of words such as penalty should be avoided. The case law indicates a general principle that at the time the disqualification order is made that the operator cannot be trusted to comply with the regulatory regime and that the objectives of the system, the protection of the public and fairness to other operators, requires that the operator be disqualified.

24. It continues as follows in paragraph 59:

In certain circumstances a traffic commissioner may order that an individual is not only disqualified from holding or obtaining an operator's licence but also from being involved in

management, administration or control of the transport operations of an entity that holds or obtain such a Licence in Great Britain. The Upper Tribunal had regard to a decision of the Transport Tribunal and in particular that a traffic commissioner must “ensure that the purpose of an order is not undermined or defeated by a disqualified person becoming involved with the management of another operator’s licence.” This will be even more important where a traffic commissioner is concerned regarding the risk of “fronting”.

25. In 2010/29 David Finch Haulage the then Transport Tribunal said: “*The principles that derive from these and other cases on the point can be simply stated. The imposition of a period of disqualification following revocation is not a step to be taken routinely, but nor is it a step to be shirked if the circumstances render disqualification necessary in pursuit of the objectives of the operator licensing system. Although no additional feature is required over and above the grounds leading up to revocation, an operator is entitled to know why the circumstances of the case are such as to make a period of disqualification necessary. Additionally, periods of disqualification can range from comparatively short periods to an indefinite period, and can be confined to one traffic area or be extended to more than one*”.
26. In just 18 months, Mr Barrett has breached the trust I put in him and he has flouted the requirements of the operator licensing regime across the board. What he has done strikes at the heart of road safety and fair competition. He cannot be trusted to act lawfully on his own account or in terms of ‘fronting’ for his father. Accordingly, I have reached the decision set out in paragraph 2 above.

Operating Centre issues

27. Mr Barrett has been parking at 22D-G Stable Way West London W10 6QX. The VE has recommended that a Traffic Examiner Environmental visit is required before the site is granted on any Licence. He specifically raises the possibility of noise disturbance; soil being dragged onto the highway and the inability to enter and exit in forward gear in a residential area. I have asked the Central Licensing Office in Leeds to note this for any future applications.

A handwritten signature in cursive script that reads "Sarah Bell".

Miss Sarah Bell
Traffic Commissioner
29 July 2019