



GROUNDWORKS SOLUTIONS LTD

LICENCE NUMBER: OK1145379

GOODS VEHICLES (LICENSING OF OPERATORS) ACT 1995

TRAFFIC COMMISSIONER'S WRITTEN DECISION

Decision

1. Pursuant to adverse findings under Section 26(1)(b), (f) and (h) of the Goods Vehicle (Licensing of Operators) Act 1995, Groundworks Solutions Ltd no longer satisfy the mandatory requirement under Section 13(b) – not being fit to hold a licence. Accordingly, licence OK1145379 is revoked with effect from 23:45 on 21 September 2019.
2. I disqualify Groundworks Solutions Ltd and Mr Wayne Cooper from holding or obtaining an operator's licence or being involved in an entity that holds or obtains such a licence in Great Britain for a period of 3 years from 23:45 on 21 September 2019.

Background

Previous history

3. An application for this Operator's Licence was received on 03/05/16 (CH 09735444). Checks carried out by the Central Licensing Office ('CLO') showed Wayne Cooper, director of licence holder OK1124836 Groundwork Solution Limited (CH07644761) was listed as a director of the applicant company when it was incorporated on 17/08/15. He was removed as director of the company on 27/04/16 - just before the application was submitted on 03/05/16.
4. Natalie Palmer-Cooper was listed as a director of Groundworks Solutions Limited on Companies House on the date the application was received but not declared as such. Subsequently, the Companies House record has been amended and backdated to show her resignation as 31/01/16. The following comments were provided as to why she was not declared on the application:

"Natalie Palmer Cooper should have been taken off as director as she was only used to set up the company. She should have been removed and will subsequently be removed."
5. Matthew Phyll who had no previous licensing history, was appointed as director on 27/04/16. He signed the application form the following day.
6. OK1124936 Groundwork Solutions Ltd's Restricted Licence was granted on 06/02/14 authorising 2 vehicles was called to a preliminary hearing on 15/04/016 due to an

unsatisfactory maintenance inspection. At the hearing an undertaking for Wayne Cooper to attend an operator management course was agreed

7. Mr Cooper failed to declare at the preliminary hearing that the company were experiencing financial difficulties. On 19/04/16, a liquidator was appointed in respect of the Creditor's Voluntary Liquidation.
8. The liquidation of Groundwork Solutions Ltd (07644761) on 29/04/16 was not declared on the application for OK1145379 the linked directors were removed prior to the licence submission. The application was for the same site and vehicles. A request to surrender licence OK1124836 was made on 10/05/16.
9. Due to concerns regarding the links with the two companies, the then Traffic Commissioner decided to consider the application for licence OK1145379 at a joint public inquiry on 24/08/16 with licence OK1124836 Groundwork Solutions Ltd. The decision was to grant the application with the following undertaking

'Wayne Cooper is to have no role in the management or operation of the transport aspect of the business.'

10. Licence OK1124836 was revoked on the following grounds:

- No financial standing.
- The loss of repute of the director Wayne Cooper due to the following reasons:

Two companies going into voluntary liquidation (not declared)

Mr Cooper appeared at a preliminary hearing on 15 April 2016 before the Traffic Commissioner and did not disclose a conviction for a Health and Safety matter or the fact that the company were in financial difficulties (due to a £100,000 fine). The company went into liquidation four days after the preliminary hearing.'

Current issues

11. On 04/03/19, Wayne Cooper was added as a director to the operator's licence via the online system. He declared a liquidation but he did not declare a conviction. On the same day Matthew Phyll was removed as director. On 26/03/19, Natalie Palmer Cooper was added as a director to the operator's licence via the online system. No insolvency or convictions were declared. Companies House shows that Matthew Phyll resigned on 08 /03/19. Wayne and Natalie Cooper were appointed as directors in January 2017.
12. CLO issued a letter requesting further information on 13/03/19 and the Operator's Solicitor (Backhouse Jones) responded on 27/03/19. The letter confirmed that:
 - Wayne Cooper has not attended any refresher training having made a decision not to take part in transport activities. If required, he is happy to attend an OLAT course
 - He did not declare his conviction as he thought OTC were already aware.

- Wayne Cooper has stated that he has had no role in the management or operation of the transport aspects of the company.
- Mr Phyll no longer wanted to be a director but remains employed by the business and is solely responsible for the transport operations
- They did not notify this office of the additional directors in January 2017 as they misunderstood the requirement. *“It is their belief that only directors having day to day involvement in the transport operations of the business or, assuming ultimate responsibility were to be listed as directors on the licence”*.

13. The website currently has Wayne Cooper as a point of contact for the business. All these matters were referred to me and I decided to call the operator to a Public Inquiry.

Hearings

14. The Public Inquiry commenced and concluded on Wednesday 24 July 2019 at The Public Inquiry Room, Office of the Traffic Commissioner, Ivy House, 3 Ivy Terrace, Eastbourne, BN21 4QT. I heard oral evidence from Mr Wayne Cooper who was represented by Mr Martin Smith, solicitor.

The Issues

15. At the outset, I confirmed financial resources was met. The Operator accepted that Natalie Palmer-Cooper does not undertake the role of director within the business and therefore either the undertaking on the Licence would be removed or the Licence revoked. The relevant principle being that where there is a sole director the conduct of that director informs the good repute of the company and if Mr Cooper is unable to manage the transport operation there is no one to take his place – as per the Upper Tribunal authorities of 2013/008 Vision Travel International Limited and T2013/61 Alan Michael Knight.

Documents and Evidence

16. Before considering this decision I have reviewed the following: -

- Public Inquiry bundle
- Witness Statement of Wayne Cooper dated 22 July 2019
- Documents handed in during the course of the Public Inquiry
- My handwritten, contemporaneous notes
- 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

17. I have produced the following chronology to put Mr Cooper’s evidence in context:-

- **24 July 2015** - Wayne Cooper is sentenced for a breach of the Construction (Design and Management) Regulations 2007 at Canterbury Crown Court. He was sentenced as the former director of Cooper Services Ltd. The tragic incident led to the death of Callum Osborne in 2011 when a trench he was digging collapsed on him on only his second day of

working for Mr Cooper. Mr Cooper was sentenced to 12 months imprisonment, suspended for 2 years and ordered to pay £100,000 fine and costs.

- **17 August 2015** - Groundworks Solutions Ltd is incorporated. The directors at incorporation are Mr Cooper and Natalie Palmer-Cooper (“NP-C”).
- **15 April 2016** - Groundwork Solutions Ltd (“Old Co”) OK1124836 attends a Preliminary Hearing before Traffic Commissioner Denton.
- **19 April 2016** - liquidator appointed for “Old Co”.
- **27 April 2016** - Mr Cooper is removed as a director of Groundworks Solutions Ltd and Matthew Robert Phyll is appointed as director on the same day.
- **28 April 2016** - Mr Phyll signs the GV79 for Groundworks Solutions Ltd.
- **3 May 2016** - CLO received the GV79. NP-C is not listed as a director.
- **26 May 2016** - Companies House received notification that NP-C resigned as a director as of 31 January 2016.
- **24 August 2016** - a joint Public Inquiry for “Old Co”, OK1124836, and the new application for Groundworks Solutions Ltd. The “Old Co” licence is revoked on the grounds of financial standing and material change. The Traffic Commissioner noted that the intended liquidation four days post the Prelim Hearing was not disclosed at the hearing and Mr Cooper also failed to disclose his conviction from 2015. The new application was granted with an undertaking that Mr Cooper would have no role in the management or operation of the transport aspects of the business.
- **November 2016** - when Mr Cooper said in oral evidence that he became involved in Groundworks Solutions Ltd.
- **18 January 2017** - NP-C is appointed as a director. Companies House are notified but CLO are not.
- **27 January 2017** - Mr Cooper becomes a director. Companies House are notified but CLO are not.
- **1 March 2017** - Groundworks Solutions Ltd join the Road Haulage Association.
- **6 April 2017** - NP-C and Mr Cooper are notified as joint Persons with Significant Control at Companies House.
- **November 2018** - when Mr Cooper said in oral evidence that he became involved in challenging some of the transport aspects such a drivers hours and MOT history.
- **4 March 2019** - Mr Cooper is added as a director online on VOL (the Vehicle Operator Licence electronic system).
- **8 March 2019** - Mr Phyll resigns as a director.
- **13 March 2019** - CLO write to the company requesting explanations.
- **26 March 2019** – NP-C is added as a director on VOL.
- **27 March 2019** - the operator replies to CLO via its’ then solicitors.

- **May 2019** - Mr Phyll stops working at the company altogether.
- **17 June 2019** - Call-in letter sent to operator.
- **27 June 2019** - Mr Cooper and several members of staff attend a one-day Operator Licencing Awareness Seminar.
- **28 June 2019** - Wayne Cooper is carrying out training in the company.

18. Mr Coopers written and oral evidence can be summarised as follows:-

- Mr Cooper and NP-C (his wife) resigned as directors in 2016 because they needed a break. Mr Cooper states "I was exhausted and suffering from stress".
- Mr Phyll became a director to look after their interests whilst they were taking a leave of absence.
- They both became directors again in January 2017.
- During that period Mr Phyll was not only the director but also the mechanic responsible for maintaining some of the vehicles.
- After January 2017, according to the witness statement, it was agreed "*between the three of us*" that Mr Phyll would continue to be solely responsible for the management and operation of the transport activities. This is at odds with the oral admission that NP-C is not involved in the decision making.
- The witness statements state that "NP-C" deals with the book-keeping and Mr Cooper deals "with customers and contractors, supervises projects and ensures that Health & Safety requirements are met on site".
- Mr Cooper did not connect his voiced concerns around the hours rules and MOT as being at odds with the undertaking for his non-involvement in the transport operations.
- It was only after taking legal advice in March 2019 that Mr Cooper and NP-C became aware that they could not abdicate their direct responsibilities for the regulatory compliance of the transport activities of the business.
- Despite that subsequent knowledge, transport operations continued after Mr Phyll had retired as a director. Transport operations continued up to the day of the hearing.

19. By his own admission Mr Cooper was fully aware of the undertaking on the Operator Licence from when it was granted in 2016. Mr Cooper returned to work at the company just 2 – 3 months later. He became a director in January 2017. He avers not to have realised the requirement to notify his appointment as he was not involved in transport operations. At that time there was another director who was responsible, namely Matthew Phyll. Whilst that is not excusable, it does have some credibility.

20. However, by his own admission, from the end of November 2018 Mr Cooper was getting involved in the transport operations. He was raising queries in relation to MOT failures, general maintenance and which drivers' hours and working time directive regime the business should be following. This appears to have caused tension with Mr Phyll - in light of the undertaking, perhaps not surprisingly. It placed Mr Phyll in an invidious position.

21. It is obvious that, at that point, Mr Cooper should have notified CLO of his appointment as a director and to suggest otherwise is at best a reckless disregard for the regime. Even if he were to have the benefit of the doubt to that point, from March 2019 Mr Cooper knew that he

was directly in breach of that undertaking because he was the only director working in the business. Despite that, this has been ongoing right through to now.

22. Mr Cooper says that he had no choice but to continue the transport operations. Mr Cooper in fact had two choices – a further director could have been appointed and permission sought to continue operating pending the application to remove the undertaking or park the vehicles up. Mr Cooper did neither. Mr Cooper has put commercial necessity ahead of compliance.
23. It is an aggravating feature that the tachograph and maintenance records produced to the hearing identify significant non-compliance. By way of example: centrefield errors in the analogue tachographs; inadequate brake testing and out of date Preventative Maintenance Inspection forms. This is all in the context of the original reason why there is the undertaking relating to Mr Cooper's involvement at all. Namely his lack of candour at the preliminary hearing in 2016 and the serious Health & Safety conviction in 2015.
24. On the evidence, the only positive in this case is that the operator's licence awareness training has been undertaken and transport consultants have been engaged, if the Licence is allowed to continue. In my judgement, that cannot outweigh the serious disregard for the regime over a significant period of time. Operator's must remember that undertakings offered and accepted at hearings hold great weight and if they are not treated with care and caution, trust will be broken. I cannot trust this operator moving forward as such a finding has no meaningful corroborative evidence. The trust is sufficiently broken that if the Operator is put out of business then it is not a disproportionate outcome. Accordingly, I have reached the decision set out in paragraph 1 above.

Disqualification

25. 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.

26. 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".

27. 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”.

28. Since 2016, Mr Cooper has misled a Traffic Commissioner at a hearing and flouted an undertaking on this Licence. His conduct is incompatible with the integrity inherently necessary for the operator licensing regime to continue to succeed. Trust is not something that can be learned by a training course. For trust to be regained, there needs to be supporting evidence. As at the date of the hearing there was no such evidence. Accordingly, I have reached the decision set out in paragraph 2 above.



Miss Sarah Bell
Traffic Commissioner
8 August 2019