



IN THE WELSH TRAFFIC AREA

PUBLIC INQUIRY

BRODYR JAMES CYFYNGEDIG

PG1027639

TRANSPORT MANAGER – GWYN RICHARD LEWIS

PUBLIC PASSENGER VEHICLES ACT 1981

BEFORE

**ANTHONY SECULER
DEPUTY TRAFFIC COMMISSIONER**

HEARD AT THE WELSHPOOL LAW COURTS

ON

26th JUNE 2019

1. The operator's licence of Brodyr James Cyfyngedig is suspended for 21 consecutive days with effect from Saturday 20th July 2019.
2. The repute of the operator is marked as further tarnished and the repute of the Transport Manager, Gwyn Richard Lewis, is marked as tarnished and he is warned as to his future conduct as a transport manager.
3. Undertakings are imposed on the operator's licence:
 - i) To operate a fully functional and effective driver defect reporting system and maintain proper records;
 - ii) To ensure all vehicles receive rolling road brake tests at quarterly intervals and records are kept;
 - iii) To maintain the full services of Tachoman Ltd. to monitor compliance with drivers' hours and working time and to demonstrate that any infringements are brought to the attention of drivers and acted upon;

- iv) To provide to the Office of the Traffic Commissioner an audit report of tachograph and drivers' hours/working time compliance from Tachoman Ltd covering the period July-December 2019 by 31st January 2020;
- v) To provide to the Office of the Traffic Commissioner an audit report on maintenance systems from Lloyd Morgan Group covering the period July-December 2019 by 31st January 2020.

Background

1. Brodyr James Cyfyngedig, "the operator" is the holder of a Standard International Passenger Service Vehicle Operator's Licence authorising 17 vehicles issued on 19th December 2003. The directors are David Elwyn James and Thomas Morgan Gwywfor James.
2. Gwyn Richard Lewis was appointed as Transport Manager on 11th September 2018 following a previous Public Inquiry on 17th May 2018 when the director David Elwyn James lost his repute as a Transport Manager. The Operator's repute was marked as tarnished and a formal warning was recorded on the licence.
3. Undertakings were placed on the licence for the services of Tachoman Ltd to be engaged on a permanent basis and for an audit of maintenance systems and documentation to be provided after 9 months.
4. The audit report supplied by Lloyd Morgan Group on 4th March 2019 revealed little progress from the last inquiry. Many of the basic maintenance systems were marked as "unsatisfactory" or "area for improvement".
5. Following an investigation of tachograph and drivers' hours systems by Traffic Examiner, Ann Morgan, the operator was called back to a Public Inquiry. A report was also received from Vehicle Examiner, Lee Rees.

The Public Inquiry

6. At the Public Inquiry on the 26th June 2019, the operator attended through director, David Elwyn James, represented by David Williams, Solicitor. Welsh Language interpreter, Ms. Catrin Gilkes, attended to assist the operator. Andy

Edwards, Managing Director of Tachoman Ltd, attended to present a report on tachograph systems dated June 2019.

7. Transport Manager, Gwyn Richard Lewis, attended in response to a separate call-up letter issued against his repute/professional competence as a Transport Manager.
8. Traffic Examiner, Ann Morgan and Vehicle Examiner, Lee Rees, also attended.

Evidence

9. Evidence was heard from VE Rees and TE Morgan. Their findings of shortcomings in the maintenance and tachograph etc. systems were not disputed by the operator. These included:
 - Delayed prohibition at inspection;
 - Driver defect reports not being acted upon;
 - Driver reportable defects being found at safety inspections;
 - No tyre management system – tyre over 10 years old in use;;
 - No measured brake performance tests between annual Tests;
 - Incomplete drivers' hours records;
 - Ineffective action on infringements;
 - Transport Manager's control insufficient.
10. On behalf of the operator, evidence was heard from director, David Elwyn James and Transport Manager, Gwyn Richard Lewis.

Findings

11. Having regard to the statements considered and the evidence heard I find that:
 - i) The operator has breached the undertaking to observe the rules on drivers' hours and tachographs and keep proper records (Sec.17(3)(aa) of the Act);
 - ii) The operator has breached the undertaking to keep vehicles fit and serviceable and to maintain effective driver defect reporting procedures (sec. 17(3)(aa) of the Act);

- iii) Prohibition issued (Sec. 17(3)(c) of the Act);
- iv) The Transport Manager, Gwyn Lewis has not provided continuous and effective management of the transport activities of the operator (Art.4.1 EU Reg. 1071/2009)
- v) Progress since the last Public Inquiry held on 17th May 2018 has been woefully inadequate. TE Morgan refers to the systems as still being in “disarray”. The audit report contains far too many “red” (unsatisfactory) and “amber” (area for improvement) markings. The VE report contains persistent shortcomings and the response to the audit report was ineffective. Finally, the Tachoman report concludes; “there has obviously been a failing with the systems as no improvement has been achieved at all since our involvement with the company”.

Decision and Reasons

12. The Transport Manager, Gwyn Lewis, has clearly been frustrated in any attempts to modernise the systems of the operator. He was very uncomfortable in answering my questions because of his loyalty to his employers. Whilst that loyalty is commendable, I have underlined to him that he risks losing his repute and professional competence as a Transport Manager if he allows management of systems and drivers to fail. He has an independent professional duty to manage, or, to resign from the role and inform the Traffic Commissioner of the reason, if he is frustrated.
13. I mark his repute as tarnished but allow him to retain his professional competence on the basis of the assurances given.
14. The director, David Elwyn James, is now 72 years of age. His fellow director, Thomas Morgan Gwywfor James, is now 80 years of age. Whilst age is not in any way a disqualifying factor, both directors need to demonstrate that they have the commitment, energy and capacity to modernise systems. I have given credit to the directors for their willingness to engage professionals to assist them in making recommendations. Where they have patently failed is in implementing

those recommendations and/or in giving those employed authority to make changes in their place.

15. I remind the operator that the purpose of the maintenance and tachograph systems is to improve road safety. I am told that the operator performs a valued service within the local community. That service involves the transporting of children and vulnerable members of society. Their safety cannot be allowed to be compromised by the operators continuing to ignore current operating standards.
16. In assessing whether the operator can be allowed to retain its operator's licence, I have carefully considered whether the operator will, "in future, operate in compliance with the operator's licensing regime" (Priority Freight Ltd & Paul Williams (2009/225)). The evidence of the recent past is not encouraging but I am assured that the operator is determined to work with professional advisers to address the shortcomings.
17. Based on their long history in the licensing system and their stated value to the local community, I am prepared to give the operator a final opportunity to demonstrate full compliance. If the directors fail, they can be in doubt as to the likely outcome for their business.
18. I reflect the failure to comply with the undertakings on the licence and the inept response to the 2018 Public Inquiry decision by a suspension of the operator's licence. I have heard representations as to the commercial impact of a substantial suspension of this operator's licence but the operator needs to appreciate that those implications have been self-inflicted and that the alternative is revocation. I have allowed the suspension to be delayed until the school holidays so as not to cause disruption to these vital services.
19. The operator's licence is suspended for 21 consecutive days with effect from Saturday 20th July 2019.
20. The repute of the operator is marked as further tarnished and the repute of the Transport Manager, Gwyn Richard Lewis, is marked as tarnished and he is warned as to his future conduct as a transport manager.
21. Undertakings are imposed on the operator's licence:

- i) To operate a fully functional and effective driver defect reporting system and maintain proper records;
- ii) To ensure all vehicles receive rolling road brake tests at quarterly intervals and records are kept;
- iii) To maintain the full services of Tachoman Ltd. to monitor compliance with drivers' hours and working time and to demonstrate that any infringements are brought to the attention of drivers and acted upon;
- iv) To provide to the Office of the Traffic Commissioner an audit report of tachograph and drivers' hours/working time compliance from Tachoman Ltd covering the period July-December 2019 by 31st January 2020;
- v) To provide to the Office of the Traffic Commissioner an audit report on maintenance systems from Lloyd Morgan Group covering the period July-December 2019 by 31st January 2020.

Anthony Seculer,
Deputy Traffic Commissioner,
Welsh Traffic Area.

10th July 2019