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## DECISION OF THE TRAFFIC COMMISSIONER FOR THE NORTH WEST OF ENGLAND

In the matter of the  
Public Passenger Vehicles Act 1981 (the 1981 Act)

**ANTHONY MULLANE & JANE MULLANE**  
trading as **A & J Taxis**  
**PC1148282**

Public Inquiry held at Golborne  
on 12 June and resumed on 19 July 2019.

### Decision

The licence of Anthony Mullane and Jane Mullane is revoked in accordance with Section 17 (3) (aa), (c), (d) in respect of their repute and (e) of the Act. The revocation will take effect immediately.

### Background

1. The partnership of husband and wife, **Anthony Mullane and Jane Mullane trading as A & J Taxis (PC1148282)** is the holder of a Restricted Public Service Vehicle operator's licence for 2 vehicles. It was granted on 14 November 2016. Only one vehicle is being operated by the partnership at the present.
2. The licence is subject to a series of specific undertakings, one of which is pertinent for the purposes of this decision. It reads:  
  
*Vehicles with eight passenger seats or less will not be operated under the licence without the prior written agreement of the Traffic Commissioner, who may require you to agree to certain undertakings.*
3. Since 13 February 2019, (in respect of this licence) the business has operated a registered match day bus service called "Taxi One" between Liverpool City

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Centre and the Anfield Road Football Stadium in the city, where Liverpool Football Club play their home fixtures.

4. The terms of the bus registration called Taxi One include the following description that:

*This service operates on Liverpool FC home match days only ferrying people to and from Liverpool centre to Anfield. The operator has been running this service since the grant of a new Restricted licence but did not realise he had to re-register the service.*

## Previous history

### Events of 9 December 2017;

5. The partnership's restricted licence was the subject of a formal written warning recorded against it in February 2019. This followed the conviction of one of the partners, Anthony Mullane, as a driver, for failing to use a tachograph to record driving within the scope of the EU legislation, when he had been using a PSV on 9 December 2017. The fact of the conviction had not been notified by Mr Mullane. A fine had been imposed at Chester Magistrates' Court on 8 October 2018. Mr Mullane had initially contested the original fixed penalty issued, by requesting a court hearing, and pleading Not Guilty. He assured me that subsequently, however, he had pleaded guilty to that offence.
6. Mr Mullane had explained that he had not appreciated the need to use a tachograph for the 12 mile private hire journey undertaken from Widnes to Liverpool. He described it as his "negligence". He further offered that he did not report the matter as he wrongly thought that DVSA's involvement in the prosecution was such that the Traffic Commissioner would therefore know of the matter.

## The special restricted licence

7. Whilst the partnership's other licence was not called before me at this Public Inquiry, it also holds a Special Restricted Public Service Vehicle operator's licence (PC1143947), which was granted in August 2016.
8. The key features of a Special Restricted Public Service Vehicle operator's licence are:
  - The licence may only be used to operate a licensed taxi or private hire vehicle (up to 8 passenger seats) but on a local registered bus service;
  - Any stops on the service must be within 15 miles and include at least one in the area of the council issuing to the licence holder his taxi or private hire vehicle licence;
  - The bus service must be registered with the local Traffic Commissioner.
9. There is no bus service registered for this Special Restricted licence at this time.

## The previous special restricted licence

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10. As a sole trader, Anthony Mullane had held another Special Restricted Public Service Vehicle operator's licence (PC1102206). The licence had been subject to a warning issued at a Public Inquiry in August 2014. The licence had been surrendered in October 2016 in circumstances where it had been found that Mr and Mrs Mullane were running their business as partnership, and therefore that the wrong entity was named on that licence.
11. Mr Mullane had begun to operate his registered match day bus service called "Taxi One" under this Special Restricted licence back in 2011. He accepted however that when this licence was surrendered, simultaneously with the grant of both the restricted licence (the subject of these proceedings) and the new Special Restricted licence that the partnership failed to make new bus service registration applications.

## Private Hire Vehicle (PHV) licences issued by Liverpool City Council

12. The partnership is currently the holder of PHV licence for SA14 BJY (an 8-seater VW Transporter); it is valid to March 2020.

## The Public Inquiry

13. The Public Inquiry was initially convened at Golborne on 12 June 2019. At the end of it, I had indicated that I would give a written decision. Within days, and therefore before I could complete that decision making process however, further evidence was provided by DVSA to clarify matters that had been raised during the original hearing. In fairness to the operator, that additional material was served upon the partnership and an opportunity given to it to make representations upon it, or, if desired, to allow the operators to ask for the Public Inquiry to be resumed so that the new evidence could be tested. The partnership chose the latter course, and it was in these circumstances that the hearing resumed on 19 July 2019.

14. The brief for the original hearing had referred to whether the operator:

- continued to meet the terms of the main occupation requirement,
- had been compliant with the bespoke licence undertakings on the licence,
- had failed to notify convictions, and
- had accumulated prohibitions.

Such were the concerns that the partnership's good repute and financial standing were alleged to be brought into question.

15. At the end of the first hearing the partnership was allowed a further 7 days to produce current bank statements which demonstrated business activity.

## The evidence

16. Mr Mullane attended for both hearings, for the first with Mrs Mullane: the partnership was unrepresented.

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17. Traffic Examiner Aspell (TE) was present only at the second hearing.
18. I heard evidence from both Mr Mullane, from TE Aspell and briefly from John Saunderson, Merseytravel's Bus Support Officer, who was observing the second hearing.
19. The written evidence before me was made up of a brief paginated 1 – 144, including the additional papers for the resumed hearing, which had been served on the partnership.
20. Financial standing was satisfied by the provision of bank statements.
21. The substance of the main issues raised can be conveniently outlined in the separate sections below.
22. Mr Mullane told me he was 62 years of age and had been involved in passenger transport for many years, initially with taxis. He had discovered by chance special restricted licences, which enabled him to register bus services but only to use his small vehicles to deliver that service for Liverpool FC matches. The later realisation that a larger vehicle of between 9 and 16 passenger seats, had led to the application for the restricted licence.
23. Mr Mullane offered that he shared the views of others that the operator licensing regime was unduly complex and confusing. He offered what he believed was evidence of a similar view held by Stagecoach, although the extract provided was in fact concerned with a different aspect of licensing concerned with demand responsive bus services.
24. Other than his driver CPC training, Mr Mullane could not point to any current training or professional development.

## Events of 27 February 2019

25. Mr Mullane accepted that on that day TE Aspell saw the vehicle SA14 BGY in operation picking up and dropping off passengers. The vehicle had 8 passenger seats. Mr Mullane accepted it was driven by his son. It was operating neither as a taxi, nor as a private hire vehicle (Mr Mullane did not obtain a PHV licence until 15 March 2019). The TE suspected the use may have been unlicensed and his subsequent checks confirmed there were issues with the use that evening, as follows:
  - Whilst the vehicle had been listed on the restricted operator's licence that such nomination was in breach of the terms of the undertaking about small vehicles (set out in paragraph 2 above), since no notice of the use of a small vehicle on the operator's licence had been sought or given;
  - The vehicle had not been tested as a PSV, when it ought to have been;

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- Nor was the bus service, Taxi One which was purported to be in progress at the time, registered as such, as it should have been. The operator offered that this situation had existed for some 3 years.

26. Mr Mullane could do nothing more than offer his apologies for his error and that he had since put right the matters. He was not prepared to accept full responsibility for the errors made, which he believed ought to have been brought to his attention. He believed that at the time of the grant, he misinterpreted the terms of the licence, which barred him from operating vehicles with 8 or fewer seats. He said he had assumed that in obtaining the two vehicle restricted licence, the arrangement superseded that under which the small vehicle was operated under the special restricted licence.

## Events of 6 June 2019

27. Mr Mullane accepted that on 6 June 2019 Merseytravel staff had observed the Taxi One service in operation between the city centre and Liverpool's stadium at Anfield. Merseytravel later raised concerns about the legality of that provision via TE Aspell. Their immediate concern was that the bus registration was in respect of matchdays for Liverpool FC but the use to which the service was operating was a "Take That" concert taking place at that location.

28. Lawful running of a service for the purpose of a concert would have required either the variation of the football service for that purpose, or the registration of a separate service for such events.

29. Put to Mr Mullane at the second hearing, he accepted that an error had been made. Evidence was provided that in October 2018 he had emailed the Central Licensing Office at Leeds to make enquiries about the registration of services for the forthcoming concerts. He had though sent the email to an address no longer in use and when inevitably no reply had been forthcoming, he had not followed up the position with a further email, or phone call.

30. Mr Mullane "held (his) hands up". He had since found out what he ought to have done.

## Main occupation

31. It is a requirement of a restricted licence that the terms of Section 13 (3) (b) (ii) are complied with. This provisions states:

*A restricted licence authorises the use (whether on national or international operations) of –*

*a) Public service vehicles not adapted to carry more than eight passengers;*

*and*

*b) Public service vehicles not adapted to carry more than sixteen passengers when used;*

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- i) [..]  
or
- ii) *by a person whose main occupation is not the operation of public service vehicles adapted to carry more than eight passengers”.*

32. Upon questioning him, Mr Mullane gave evidence that the partnership’s business, under the banner of A & J Taxis had two main strands to its activities:

- The operation of a PHV licence using small 8-seater vehicles. This part of the business embraced contract work through an arrangement with Fox Transfers (airport transfers to/from the city from/to Liverpool John Lennon airport) and work for Radio Cars. It also included work carried out under the Special Restricted licence for a small vehicle on Liverpool FC matchdays, albeit that there is no bus registration under the special restricted licence for the provision of this service, and
- The operation of a single PSV (a minibus with 16 seats) on the Taxi One registered bus service, together with other occasional private hire bookings.

33. Mr Mullane maintained that the PHV use described above represented his main occupation. The accounts available (most recently for the financial year to 31 October 2017) were however prepared in a manner that did not separate out the two strands of the business, nor did it attempt to breakdown the expenditure associated with each aspect. It was therefore not possible for it to be immediately clear whether his assertion about main occupation was accurate.

## Maintenance regime

34. Whilst the operator had the typical daily check and driver defect report book, based on nil defect reporting available, there were only two entries contained in it, the most recent in 2017. It was evident that defects were not being recorded and that no audit trail of checking was undertaken.

35. As is the case for most operators called to Public Inquiry, the operator had been required to bring evidence of “the regular safety inspection records for the last 6 months”. Examination of the records produced by the partnership (after the hearing) showed that the operator had ceased to obtain preventive maintenance inspection reports in September 2018.

36. Such reports are typically provided by the contractor carrying out the inspection, upon which are recorded, over two pages, checks on a list of items relevant to the major safety issues on vehicles. There is space for the safety work to be listed to be carried out and for rectifications to be recorded. Critically there is a caption on the report where the contractor reports that the identified defects have been fixed and that the vehicle is fit and serviceable for use on the road. No such reports were provided and when my clerk checked with Mr Mullane (in case they had simply been overlooked by him), he was told there were none.

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37. There was available a handwritten A4-sheet, but this bore only five entries for the period September 2018 to May 2019. One referred to a pre-MOT check, others referred to a new wheel and rim (September 2018), the replacement of front discs (November 2018), handbrake adjustment (March 2019) and replaced exhaust brushes (May 2019). There were copy invoices from the nominated contractor, George Gawith, none was obviously for safety checks and it was not possible to establish if they took place in timely manner.

## Closing submissions

38. In summing up his case, Mr Mullane asked me to take account of what he believed to be a very positive track record of compliance.

## Consideration and findings

39. I find that this operator has breached the generic undertakings attached to the operator's licence, as well as the specific undertaking about small vehicles. There have been a series of breaches of the bus registrations and a failure to notify a conviction. Despite the members of the partnership having been engaged in the passenger carrying industry for several years, they have patently failed to come to terms with the requirements of the licences held. Such conduct is prejudicial to fair competition in the business and risks the obtaining of an unfair advantage by this operator.

40. On the material before me, it is only by the narrowest of margins that I find it more likely than not to be the case that the main occupation test is met. In reaching that conclusion I have taken at face value the contention that the number of Liverpool FC matches each season varies only slightly, should be limited to the August to May period and that the operator carries out only a small amount of private hire activity in the minibus. It is plainly the case that any self-employed operator holding a restricted licence must hold themselves ready to demonstrate through their accounts, kept separately, the income from any other business that they are engaged in, so that a main occupation can easily be determined.

41. Of equal, if not greater concern, however, is the finding that at some stage in the last 12 months the operator has changed maintenance contractor but in so doing has ceased to obtain any proper record, and therefore any proper assurance that the vehicle deployed has been fit for its role carrying passengers.

42. The operator accrued offence prohibitions in 2017.

43. I find that there are grounds for action against this licence under Section 17 (3) (aa), (c) and (e) of the Act.

44. Case law appropriately requires me in considering whether my findings amount to a loss of repute under Section 17 (3) (d), first to balance the positives and the negatives.

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45. This licence has not previously been to Public Inquiry, although a warning has been issued. Financial standing is not a relevant issue in this consideration.

46. I have been able to interact with Mr Mullane (more so than Mrs Mullane) over two hearings and to be able to assess his evidence over an extended period. Whilst I find that the partnership is sincere in *its intention* to seek to operate its licences compliantly, Mr Mullane's overly positive view of his level of compliance in the industry and his competence as an operator is not matched by my own assessment. There has been, and continues to be, an unacceptable number of failures to comply with licence expectations for which there is only a limited readiness on the part of the partnership to accept responsibility for what are described as "mistakes" by Mr Mullane.

47. Criticisms of any lack of compliance are typically met by one or other of two responses that:

- The fault is of the relevant authorities, which have failed to point out shortcomings, or
- The regime has such complexities that the partnership cannot be expected to get it right.

I find neither is a viable explanation. To compound those matters, there is no true acceptance that the undertakings attached to the licence are promises made to the Traffic Commissioner and that I have a legitimate expectation that there will be compliance without the need for intervention. There is no acknowledgement from Mr Mullane that it is appropriate that he undertake training to address matters, albeit I did detect in Mrs Mullane an acceptance that this would be worthwhile.

48. Whilst I entirely accept that the serious maintenance shortcomings are not matched, as is so often the case, by a lengthy adverse record of prohibitions, I derive limited comfort, since there is little evidence of the vehicle being subject to maintenance checks at roadside by DVSA. There has been one such encounter in the last 5 years.

49. My confidence in this operator to ensure compliance and uphold the expectations of a licence holder has been seriously undermined: I do not trust this operator to achieve licence compliance.

50. In reaching a conclusion, I have considered the Senior Traffic Commissioner's Statutory Document No.10: the principles of decision-making and the concept of proportionality and, in particular, Annex 3. The nature of the findings, which I make is such that I conclude that *severe* regulatory action is appropriate in this case.

51. The Guidance Document provides starting points for consideration by Traffic Commissioners in considering regulatory action. Whilst each case must be dealt with on its own merits, action taken including licence revocation and disqualification from holding or obtaining operator's licences is reserved for categories of case falling into the definition as warranting "severe" action being taken.



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52. Descriptions of conduct including the following features are described as having a starting point of the delivery of “severe” action:

“[...] reckless acts that have compromised road safety and gave the operator a clear commercial advantage [...].”

53. The following negative features are relevant to my consideration:

- [...] convictions and/or failure to notify to the traffic commissioner within 28 days
- Ineffective management control and insufficient or no systems and procedures in place to prevent operator licence compliance failings
- Insufficient and/or ineffective changes made to ensure future compliance

54. In reaching conclusions as to whether the repute of the operator has been lost, and having weighed the factors, I ask myself the so-called Priority Freight question (2009/225), “How likely it is that this operator will in future operate the licence in compliance with the operator licensing regime?” I find that I cannot answer that question positively. Nothing I have heard leads me to conclude that it is any less likely that there will be further acts or omissions amounting to a failure to meet undertakings. The failings are relatively widespread in nature.

55. Taking all of these matters into account including the prohibitions issued, when I ask myself the supplementary question “Whether it is right for this operator to be put out of the business in which it is operated?” I conclude that the answer to that must be yes. The needs of road safety and fair competition in the business are such that this is the only proportionate decision that I may reach. This is not a case in which a direction falling short of revocation i.e. suspension of the licence or an effective curtailment of it would be appropriate in any fashion. The positives identified are significantly outweighed by the negatives.

56. Decisions made following this sort of balancing act described above are designed to ensure proportionate outcomes. It is of course the case here that the Special Restricted licence is not before me and that the partnership’s involvement in the industry may not necessarily be over as a result of this decision (because that licence for small vehicles is still live). There is of course a risk that the other licence may also be called before me. There will be a substantial risk of that happening if as seems to be the case that bus registration for football matches (and if appropriate concerts at the Anfield stadium) are not immediately obtained.

## **Decision:**

57. I record that in the circumstances the repute of the operator has been lost.

58. I direct that the restricted licence of the partnership be revoked with immediate effect in accordance with section 17 (3) of the Act as detailed above. I am unable to permit further time to pass before the licence is revoked because I am unable to be satisfied that the vehicle is safe to be on the road without a properly recorded

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maintenance inspection and certification. As it so happens, there is no Liverpool Football Club home fixture before 14 September 2019 in any event.

59. I have determined to step back from the exercise my powers to disqualify the partners. I would stress that such a step should not be taken as signalling that they would immediately be fit and suitable to hold an operator's licence.

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  
29 August 2019