



IN THE WELSH TRAFFIC AREA

PUBLIC INQUIRY

TIMOTHY WILLIAMS  
Trading as T. WILLIAMS PLANT HIRE

OG1081569

GOODS VEHICLES (LICENSING OF OPERATORS) ACT 1995 (“the Act”)

BEFORE, ANTHONY SECULER,  
DEPUTY TRAFFIC COMMISSIONER

AT THE CARDIFF MAGISTRATES’ COURTS

ON 9<sup>TH</sup> AUGUST 2019

1. On finding:

- (1) material change under section 26(1)(h) of the Act – lack of fitness and may not have financial resources to maintain vehicles and trailers;
- (2) breach of condition under section 26(1)(b) of the Act – to notify change in maintenance arrangements; 6 weekly safety inspections;
- (3) prohibitions issued under section 26(1)(c)(iii) of the Act;
- (4) false statements re 6 weekly inspections and maintenance contractor under section 26(1)(e) of the Act
- (5) breach of undertakings under section 26(1)(f) of the Act – to keep vehicles fit and serviceable; to observe rules on tachographs/drivers’ hours etc; keep records for 15 months; operate driver daily defect reporting system;

the restricted licence for Timothy Williams t/a T.Williams Plant Hire is **revoked** with effect from 21<sup>st</sup> September 2019 under section 26(1) of the Act.

2. Timothy Williams is **disqualified** from holding or obtaining an operator’s licence for 12 months with effect from 21<sup>st</sup> September 2019.

## **Background**

1. Timothy Williams, trading as T. Williams Plant Hire, (“the operator”) is the holder of a Restricted Goods Vehicle Operator’s Licence authorising 3 vehicles and 3 trailers issued on 10<sup>th</sup> October 2008.
2. On 16<sup>th</sup> August 2018, DVSA issued one of the operator’s vehicle an ‘S’ marked prohibition, (indicating a significant failure in maintenance systems), for a deep cut in one of the wheels and oil leaking from ancillary equipment onto the road surface.
3. A follow-up maintenance investigation was carried out on 31<sup>st</sup> October 2018. The maintenance systems were found to be wholly unsatisfactory.
4. A Traffic Examiner investigation was initiated and on the 13<sup>th</sup> December 2018 substantial failings were found in the systems for monitoring tachographs, drivers’ hours and drivers’ licence entitlements.
5. As a result of the shortcomings the case was referred to the Traffic Commissioner who called the operator in to a Public Inquiry.

## **The Public Inquiry**

6. At the Public Inquiry on the 9<sup>th</sup> August 2019, the operator attended represented by Mr Iwan Jeffreys, Solicitor.
7. Vehicle Examiner, Gareth Prismick, (“VE Prismick”) and Traffic Examiner, Alexander Thomas, (“TE Thomas”) attended on behalf of DVSA.

## **Evidence**

8. **DVSA Evidence.** Evidence was heard from VE Prismick and TE Thomas. Their findings of shortcomings in the maintenance and tachograph etc. systems were not disputed by the operator and they found substantial and numerous failings.
9. In respect of maintenance systems these failings included:
  1. Responsible person, operator, having insufficient up-to-date knowledge of operator licence requirements.

2. No adequate underside inspection facilities at the operating centre despite it being used for safety inspections.
  3. Failing to use the designated maintenance contractor. The nominated contractor had ceased trading some time ago and the operator failed to inform the Traffic Commissioner that inspections were being done in-house and by Bernard Davies Commercials on an ad-hoc basis. The operator had completed a renewal checklist on the 18<sup>th</sup> September 2018 which had falsely stated that maintenance was still being carried out by the nominated contractor.
  4. Inadequate driver walk-round checks and rectification work not being carried out and evidenced.
  5. Forward planner contained insufficient information.
  6. Stated inspection interval of 6 weeks not being adhered to, some inspections exceeded 11 weeks.
  7. Failing to produce 15 months of safety inspection records as required by the licence undertaking.
  8. Inspection records being incomplete. Evidence of brake tests and tyre depths missing as were mileage readings.
  9. Failing to ensure brake tests were carried out regularly in accordance with DVSA Guide to Maintaining Large Goods Vehicles.
  10. Doubts over authenticity of safety inspection records. The sheets produced were signed and dated on a date prior to the particular type of record being available from the producer. The mileage on the inspection sheets did not accord with the Tachoscan mileage. In addition, the writing from an inspection sheet dated 7<sup>th</sup> July 2018 was imprinted on records dated 26<sup>th</sup> May and 14<sup>th</sup> April 2018.
  11. MOT failure recorded for brake system deficiencies.
10. In response to the formal notice requesting an explanation of the circumstances giving rise to the shortcomings and assurances as to the measures being taken to prevent recurrence, the operator submitted a very bare list of actions being taken. Important requests for explanations regarding the authenticity of the

maintenance records and the insufficiency of inspection records were answered “No Comment”.

11. In respect of tachograph and drivers’ hours etc. compliance, systems were generally non-existent or not working satisfactorily. Failings included:
  1. The use of a vehicle during the period 21<sup>st</sup> September 2018 and 13<sup>th</sup> December 2018 without that vehicle being specified on the licence.
  2. The operator was not in possession of a Company Digital Tachograph Card and he was unable to download data from the vehicle units. Without this data monitoring of drivers’ hours compliance would be impossible or incomplete.
  3. There was no analysis of driver infringements and therefore no action could be taken against offending drivers.
  4. DVSA analysis of the downloaded vehicle data revealed a number of infringements including the operator driving for 11:12 hours without a qualifying break and an employed driver exceeding the maximum 4.5 hours driving without a qualifying break by over 1.5 hours on 4 occasions.
  5. No system for ensuring compliance with the Working Time Directive and the operator had little knowledge of the requirements.
  6. Incomplete records with the operator stating that missing records were stored at home rather than at the office/operating centre.
  7. No regular checks on drivers’ entitlement to drive or endorsement record.
  8. Drivers’ CPC training requirements not monitored and records incomplete.
  9. No training documentation in respect of safe loading techniques despite the operator carrying round timber and loose bulk loads described by TE Thomas as having “unique characteristics and implications for safety in transit”.
  10. Vehicles regularly used with tachographs out of calibration such that operator could not ensure tachographs and speed limiters were functioning correctly. Offences and other events would simply not be accessible to the operator.
12. Similar to the maintenance response, the operator’s response to the formal notice of shortcomings was described by TE Thomas as lacking in explanation for the failings and light in detail regarding assurances. For example, many

responses referred to an “external company” attending on a monthly basis and performing tasks. It would be normal for that company to be named but the operator’s response was silent as to who had been engaged. In the event, the TE’s doubts were confirmed as at the date of the Public Inquiry, over 5 months later, no external company had been contracted to attend.

13. On the 6<sup>th</sup> February 2019 the operator, accompanied by Mr Jeffreys attended a formal interview under caution with DVSA. The interview concerned the maintenance records produced by the operator to VE Prismick which were believed to be false records.
14. At the start of the Public Inquiry Mr Jeffreys presented to me a letter dated 7<sup>th</sup> February 2019 setting out his complaints to DVSA about the conduct of the interview and the contents of the interview record. I refer to the issues regarding the interview in my findings below.
15. **Evidence from Operator.** Mr Jeffreys took the operator through his evidence in chief. The operator provided little explanation for the extensive shortcomings identified by the VE and TE and concentrated on the fact that systems had been improved since the investigation. His assertion throughout, as consistently stated during the interview, was that the vehicles were “roadworthy” at all times.
16. As for the past records, he stated that some vehicles were “parked-up” for considerable periods although he accepted that this was not recorded as it should have been.
17. He had no explanation for the changes to maintenance from the designated company not being notified to the Traffic Commissioner.
18. He had subsequent to the investigation given a driver, Daniel Bennett, a written warning over not properly completing driver daily defect reports.
19. The current records intended to be produced for the Public Inquiry could not be produced in their entirety as they had been destroyed by a fire in his pick-up truck which had been taken to a garage for repair on Friday. The box file of documentation and his lap-top had been on the back seat of the vehicle when it broke down and was taken into the garage. The fire had occurred on Tuesday and he found out on Wednesday.

20. Nevertheless, DVSA Examiners were able to look at a number of documents produced by the operator to seek to demonstrate improved compliance. VE Prismick was not satisfied by the inspection documents produced to him. Some inspections were still “in-house” and lacked brake tests. One inspection record from Bernard Davies Commercials had no ticks against the inspection checklist and none of the records had brake test readings despite the operator’s assurances that brake tests were now being carried out at least 3 times per year. One record from November 2018 had no confirmation of defects being rectified and the roadworthiness declaration was not signed.
21. The operator had not yet obtained the Company Digital Tachograph Card requested by TE Thomas back in February 2019, which the operator stated he had applied for in October 2018. Asked why not, he said that he was in the hands of DVLA. He had applied a second time in April/May 2019 and when asked what he had done to chase delivery he stated “What can you do?”
22. He accepted that his written responses to TE Thomas at page 146 of the PI brief stating “Digital Tachographs downloaded on a monthly basis by external company” and “External company attend on a monthly basis to carry out downloads” were false. In fact, despite having told TE Thomas in January 2019 that he had recently employed the services of “Nick from Llanelli” to monitor the tachographs, at the Public Inquiry he was unable to say, initially, who “Nick” was. He stated that “Nick” worked for a company in Llanelli that he could not name but the details were in his telephone. Nick could not be engaged to monitor the tachographs and provide the training as stated until the operator had the Company card. After the luncheon adjournment he stated that “Nick” was in fact Rick Nugent who worked for Tachopak. His nickname was Nick and he then stated he worked for Foster Tachographs.
23. The operator stated that the only training the drivers had received since the investigation was a toolbox talk from him on loading and unloading. Their only role was to put the straps over and secure them.
24. The operator asserted that all maintenance systems were now in place. Asked by me about the rolling road brake tests, which he had stated in his “Response to

Shortcomings” email would be carried out 3 times per year, he said he did not know whether they had been carried out. He expected Bernard Davies Commercials to do it, although he accepted it was not specified in the contract produced, but he had not checked. He accepted that the brake readings were not on the forms produced.

25. Asked about the potentially false maintenance records, the operator stated that he had “translated the information from paperwork” on to the inspection sheets. He could give no information about when he had done it or why. He denied that it was a response to the DVSA request for 15 months of maintenance records.
26. Asked why he had not kept the paperwork containing proof of the checks, he stated that he did not see the need to keep it. Asked if he appreciated the seriousness and importance of the roadworthiness declaration as a contemporaneous record, he stated “yes” and he understood it was unacceptable to “translate the information” and destroy the original record.
27. Asked whether he accepted he had told the VE “the old man has great pleasure with the shredder and bonfire in the yard”, he said “yes”. He was referring to the guy who helps him in the yard.
28. Asked to explain the imprints of writing from later forms on earlier dated records, the operator’s response was “Pass” as to how they had got there.
29. Asked to explain the maintenance records being on forms that did not exist at the time of the inspection, he referred again to the “translation of information” from his A4 sheets on to an acceptable format.

## **Findings**

30. Having regard to the statements of the VE and TE and the evidence heard I make the following findings:
  - i) The operator has breached the condition to notify the Traffic Commissioner of a change in maintenance arrangements (section 26(1)(b) of the Act);
  - ii) Vehicles of the operator have been issued with prohibition notices; (section 26(1)(c)(iii) of the Act);

- iii) Statements made when applying for the licence were either false or have not been fulfilled, namely, that vehicles would be inspected at 6 weekly intervals and that safety inspections and/or maintenance repair works would be carried out at the specified contractor (section 26(1)(e) of the Act);
- iv) The operator has failed to honour the undertakings signed up to when applying for the licence, namely,
  - (a) to keep vehicles and trailers fit and serviceable, evidenced by the prohibitions, the MOT failure and the results of the maintenance investigation;
  - (b) to ensure the rules on drivers' hours and tachographs are observed, proper records are kept and that these are made available on request;
  - (c) drivers would report promptly any defects or symptoms of defects that could prevent the safe operation of vehicles and/or trailers, and that any defects would be promptly recorded in writing;
  - (d) to keep records for 15 months of driver defect reports, safety inspections and routine maintenance and make them available upon request (section 26(1)(f) of the Act);

31. The range of failings in maintenance and monitoring of tachographs/drivers' hours is serious and long-standing. The Traffic Examiner Operator Report is as bad as I have seen in over 10 years in this jurisdiction with "No System/Procedure in place, or, if in place, not working" in 12 out of 21 categories and improvements required in 3 others. The failings inevitably give rise to significant road safety concerns as demonstrated by the undetected drivers' hours offences found by TE Thomas.
32. With regard to the serious allegation, that false records were produced to DVSA examiners with the intention of deceiving the examiners into believing they were completed on the date of the inspection record declaration, I find that established beyond any reasonable doubt.
33. The operator was asked to produce 15 months of records and was clearly unable to do so. If the records he had were genuinely "translated" (transcribed) from



original inspection sheets, why would the operator not have kept the original sheets having admitted to me that he appreciated the significance of the roadworthiness declaration and the forms? His response to the VE that he “didn’t feel the need” is unsatisfactory and his comment about “the old man has great pleasure with the shredder and the bonfire” was flippant and dismissive. The operator could give no information as to when he transcribed the information on to the forms and there is no satisfactory explanation as to why. If he had produced ‘tidier’ transcribed documents why would he not have handed them over to the VE with an admission that they were not the original documents despite being dated and signed as such? The operator’s response to me about how information was imprinted from a later form onto the surface of earlier ones, “Pass”, was similarly unsatisfactory. The clear and, I find inevitable, conclusion is that the inspection records were produced in order to seek to satisfy the VE’s request for documentation which was missing or incomplete.

34. Regarding the interview and the issues raised in Mr Jeffrey’s letter dated 7<sup>th</sup> February 2019, it is important to bear in mind that the interview provided the operator with an opportunity to explain objective facts, such as inspection records being signed and dated on a date before the particular form had been published, which clearly called for an explanation. I find his explanation, such that it is given, unsatisfactory, even allowing for Mr Jeffrey’s additions and corrections in the letter of complaint.
35. Some of those corrections are merely spelling mistakes and the omission of a signature section on the first page is noted. However, the repeated references to “the lorry being safe and roadworthy on that date and any defects had been satisfactorily rectified” does not answer the questions as to why the original documents were transcribed, why they were destroyed and whether the roadworthiness declaration existed at the time of the inspection. I find that it is the operator’s version of the responses that is “self-serving” rather than the VE’s approach to the interview as alleged by Mr Jeffrey.
36. Reference is made in the complaint to the record of interview stating that “Timothy James Williams had read and signed this dated document to confirm an

accurate record had been made. A copy of this document was produced to Timothy James Williams once read and signed". The DVSA officers are accused of having "given false witness" in this respect. However, Mr Jeffreys accepted VE Prismick's explanation that the officers had printed off a pre-populated pro-forma and Mr Jeffreys conceded at the Public Inquiry that he accepted that there was no deliberate attempt to make false statements and a genuine error had occurred.

37. I find no evidence of "unfairness" in the manner in which the interview was conducted by DVSA examiners and the allegation of the notes being "selective, subjective, self-serving and omitted to include important information and details provided by Mr Williams" seems unfounded when the operator's replies, his solicitor's interventions and constant assertions of "roadworthiness" were not addressing the issue of the falsified paperwork. In giving evidence at the Inquiry VE Prismick and TE Thomas were professional, balanced and fair.
38. In contrast I found the operator to be unconvincing, unprofessional and not wholly forthcoming in his evidence. For example the response "Pass" when asked to explain the imprints on the inspection sheets.
39. I find the attitude of the operator in leaving important current compliance records on the back seat of a broken-down pick-up truck in a garage from the Friday to the Wednesday immediately preceding the Public Inquiry similarly unprofessional and irresponsible. I find it symptomatic of the operator's lax approach to record-keeping and safety systems.

## **Decision and Reasons**

**40. Balancing Exercise** - In making a decision I have full regard to the positive features of this operator's case as established by the evidence and put forward in the submissions made:

- 1) The operator was pleasant and courteous during the investigation – this is noted by TE Thomas and demonstrated at the Inquiry. However, the operator

cannot be said to have fully engaged and co-operated with the process when his responses to the formal shortcomings letters were so terse and lacking in explanation and detail. Those responses were further undermined by the operator's willingness to state as measures already taken, for example the engagement of external consultants, actions which had not been implemented.

- 2) First Public Inquiry in over 10 years since licence granted – this is noted and credit is given. It is undermined to a considerable degree by the fact that this is the first investigation of systems and procedures and the results are appalling.
- 3) Satisfactory prohibition and MOT history –The nature of the operator's work and the area of operation means that his encounters with DVSA enforcement staff are few and far between, but out of 4 Vehicle encounters in the last 5 years, 3 vehicles and 2 trailers were found to be clear of defects. There have been no Traffic encounters and no prior or subsequent prohibitions.
- 4) Positive actions taken since investigation – the improved maintenance records are noted but there were still glaring omissions from the operator's systems at the time of the Inquiry, for example the absence of full brake tests and tachograph monitoring. With a catalogue of failings as found by DVSA examiners it would be expected that an operator desperate to keep his licence would have engaged professional assistance to ensure that complete compliance was demonstrated and assured for the future. The operator has not done this and he has not even bothered to attend an Operator Licence Awareness Course before the Inquiry so that he could demonstrate his improved knowledge and commitment.
- 5) Roadworthiness of Vehicles – this is the main positive put forward by the operator and his representative, The complaint regarding the interview record seeks to add to every response as to why apparently false records were produced the qualification, "the vehicle was in a safe and roadworthy condition at that date and any defects had been rectified satisfactorily". The

problem with this statement is that it is the operator's assessment of roadworthiness that has to be relied upon and he cannot be fully trusted.

He has failed to use the designated external maintenance provider and has carried out maintenance in-house. The facilities for carrying out inspections and repairs at his operating centre are described by VE Prismick as inadequate and the operator's use of A4 sheets, which he then transcribed on to formal inspection sheets some months later, gives no confidence that his safety inspections were comprehensive and conducted in accordance with the DVSA standards pertaining at the time. This is borne out by the prohibitions, the MOT failure, reported defects not being immediately rectified and the absence of brake test readings.

41. I have to assess the operator's fitness to hold an operator's licence as at the date of the Public Inquiry and I note that the maintenance records produced are still not fully satisfactory. The operator has not attended an Operator Licensing Awareness Course as promised in February 2019 and the monitoring of tachographs and drivers' hours with external assistance has yet to commence because of his inability to obtain a Company Card in over 10 months.
42. In failing to have any systems for monitoring tachographs, drivers' hours, working time and training the operator is not only breaching a clear undertaking on the licence. He is also posing a risk to road safety, as offences will continue to go undetected. It is not for the operator to determine that the nature of his work, a significant part of which is off-road forestry work, is such that he does not need to monitor tachographs and drivers.
43. In determining "fitness" to continue to hold a restricted operator's licence, the question arises as to whether the operator can be trusted to comply in the future. In the case of Fenlon (T/2006/277) the Transport Tribunal stated: "It has been said on many occasions that trust is one of the foundation stones of operator licensing. Traffic Commissioners must be able to trust operators to comply with all the relevant laws, rules and regulations because it would be a physical and financial impossibility to police every aspect of the licensing system all day and

every day. In addition operators must be able to trust other operators to observe the relevant laws, rules and regulations.”

44. In the case of Redsky Wholesalers Ltd (T/2013/07), the Upper Tribunal confirmed the relevance of trust to restricted licence holders: “If an operator (even a restricted licence holder) cannot be trusted to comply in future, we do not see how any such operator can hope to be regarded as fit to hold an operator’s licence”.
45. The operator has chosen to enter a regulated industry where there are specific and clear requirements to keep records in order to demonstrate compliance. In falsifying records and producing them to the DVSA examiners as genuine contemporaneous documents, the operator has demonstrated a lack of integrity and respect for the operator licensing regime.
46. In September 2018, the operator responded to the Office of the Traffic Commissioner on the Licence Renewal checklist by stating that safety inspections were being carried out at D.T. Hunkin Transport when that business was extinct, a further deliberately misleading statement and breach of trust. Similarly, he has failed to engage external professional assistance, despite written and verbal assurances that he had already done so. The operator failed to convince me in his evidence and demeanour at the public inquiry that he took the licence undertakings sufficiently seriously and that any improvements would be sustained.
47. The question posed in the Priority Freight Ltd case, (T2009/225); “How likely is it that this operator will, in future, operate in compliance with the operator’s licensing regime?”, was considered in the Redsky case to be relevant to restricted licence holders. I assess this operator as being highly unlikely to comply. Apart from the willingness to falsify important safety inspection documents and make false statements to the Traffic Commissioner’s office, he has failed as at the date of the public inquiry to satisfactorily address substantial failings in his maintenance and tachograph/drivers’ hours’ monitoring systems. I have rejected the operator’s evaluation of the roadworthiness of his vehicles for

the reasons stated in paragraph 41(5) above and he has done far from enough to ensure tachograph etc. compliance.

48. With regard to the Bryan Haulage (No. 2) (2002/217) question; “is the conduct such that the operator ought to be put out of business?” the business may be able to continue doing the off-road forestry work which the operator stated accounted for around 50% of mileage. In any event the answer is “yes”. I refer to the poor scoring on the VE and TE reports in particular, the falsification of essential maintenance records and the incomplete remedial measures taken by the operator by the date of the public inquiry some 10 months after the initial investigation. When on the public roads this operator poses an unacceptable risk to public safety.
49. On the grounds stated in paragraphs 30(i) – (iv) above and having found a material change under section 26(1)(h) of the Act, in that the operator no longer has the required fitness to hold a restricted operator’s licence, the licence is revoked under section 26 of the Act with effect from 21<sup>st</sup> September 2019.
50. At the conclusion of the public inquiry I acceded to a request from the operator’s solicitor to allow 7 days for the operator to produce copies of documents allegedly destroyed in the pick-up truck fire and to produce financial evidence in order to demonstrate funds to meet the maintenance requirements of the vehicles authorised on the licence. In fact, I allowed 14 days which expired on 23<sup>rd</sup> August 2019.
51. As of today’s date no communication has been received from the operator or his solicitors. I have received notification from VE Prismick that no documentation has been received by DVSA. The email from VE Prismick states; “I also confirm that Vehicle Enforcement Manager Andrew Rustage spoke to Rick Nugent of Fosters Tachographs (incorrectly named as Tachopak by the operator during the Public Inquiry). Mr Nugent confirmed that he had not had any contact from Mr Williams for over a year”. I note that this is the “Nick” who the operator stated had been engaged.

52. The lack of communication following the public inquiry provides further confirmation of the operator's poor commitment to the operator licensing system and underlines the finding that he cannot be trusted to comply in the future.
53. The absence of financial evidence to support the maintenance requirements of the vehicles and trailers provides a further ground to support revocation of the licence under section 26(1)(h) being a material change in the circumstances of the licence holder.
54. Whilst disqualification of an operator does not automatically follow from revocation, in the circumstances of this case, where compliance systems have been so poor and the operator's conduct has so betrayed the trust placed in him by the operator licensing system, I consider that disqualification is both appropriate and proportionate. It is also necessary to demonstrate to other operators that falsification of records will not be tolerated. I have regard to decisions of the Upper Tribunal in cases such as Taz Distribution Limited and Mehruz Ahmed (T/2013/13), concerning the seriousness of fabrication of records.
55. In determining the length of the disqualification I weigh in the balance the positive features cited above and, in particular, the fact that this is the operator's first public inquiry since obtaining the operator's licence in 2008. On that basis I reduce the disqualification to what I consider to be the minimum period commensurate with the scale of the failings and the findings in this case. The operator, Timothy Williams is disqualified for 12 months from holding or obtaining an operator's licence under section 28 of the Act.

Anthony Seculer,  
Deputy Traffic Commissioner,  
Welsh Traffic Area.  
28<sup>th</sup> August 2019