



WESTERN TRAFFIC AREA

Decision of the Traffic Commissioner

Public Inquiry in Bristol, 10 October 2019

CAVENDISH SCHOOL OF ENGLISH LIMITED

PH2005142

DECISION

PUBLIC PASSENGER VEHICLES ACT 1981 (the “1981 Act”)

Pursuant to findings under Sections 17(3)(aa) and 17(3)(d) of the Act, the licence is revoked. The vehicle is not currently in use so revocation takes effect with immediate effect.

Pursuant to Section 28 of the Transport Act 1985, Cavendish School of English and Mr Marcus Barber are each disqualified from holding or obtaining an operator’s licence or being involved in management, administration or control of the transport operations of an entity that holds or obtains such a licence in Great Britain with immediate effect and for a period of three years.

BACKGROUND

1. Cavendish School of English Limited is the holder of a restricted public service vehicle operator’s licence currently authorising the use of two vehicles from an operating centre in Bournemouth. The directors are Marcus Barber and Stefan Sven Panke.
2. The current licence was granted at a hearing in February 2018 following the revocation of a 12-vehicle standard national licence, PH1128666, in July 2017 for the sister business, Cavendish Liner Ltd. That licence was predated by Cavendish School of English Ltd PH1091184 which was surrendered on grant of the Liner licence.

3. On 14 July 2019, PC Mark Burton was on duty in a marked police vehicle when he came across a minibus, BD60SRV. The driver was Mr Justin Fayer and he was employed by Cavendish School of English. Mr Fayer was at the location to collect a group of language students to take to Heathrow. Mr Fayer was not the holder of a driver Certificate of Professional Competence, nor did he have entitlement to drive the minibus for hire or reward. Mr Fayer smelt strongly of cannabis, was arrested, admitted to being a regular cannabis user and subsequently failed a drugs test.
4. The use of a vehicle with an incorrectly licensed driver, with no CPC and who failed a drugs test caused me to call the operator to public inquiry in the following terms:

Under Section 17(3)(aa) of the 1981 Act, that any undertaking recorded in the licence has not been fulfilled, specifically:

- that the laws relating to the driving and operation of vehicles used under the licence would be observed

Under Section 17(3)(d) of the Act, that the operator was no longer of good repute or of the appropriate financial standing

THE PUBLIC INQUIRY

5. Mr Nathan Barber and Mr Chris Evans attended for the operator unrepresented. I was provided with a small bundle of operator documents a good time in advance of the hearing for which I was grateful. Within that bundle was a letter signed by Mr Marcus Barber giving Nathan authority to represent the limited company.
6. The oral evidence is electronically recorded and a transcript is available on request; I repeat here only that which is central to my decision.
7. Financial standing was met. I confirmed that the operator was aware of the potential outcome from the public inquiry and had made a conscious decision to attend without representation.

The evidence of Mr Nathan Barber

8. I asked Mr Barber the whereabouts of the UK-based statutory director, Marcus Barber (I was aware from previous inquiries that Mr Panke lives outside UK and has limited involvement). I was told that Marcus Barber was in Germany on business. Nathan Barber went on to tell me that transport was now largely undertaken by German coaches who brought the students in to the country and stayed with them. There was one 16 seat minibus in possession which was used for students arriving by air in to Gatwick and Heathrow.

9. Driver Justin Fayer had been recruited on recommendation of a long-serving employee, the caretaker, who had since retired. He was initially recruited to drive the smaller vehicles, cars with eight seats. It had not been intended that he drive the minibus. Mr Barber had checked his plastic photocard but not his DVLA record online. He knew now that was inadequate. He was unaware that Mr Fayer used cannabis.
10. I noted that the MOT on the vehicle had expired on 26 May 2019 and was not re-MOT'd until 22 July 2019. The police encounter was 14 July so the vehicle was clearly in use. Mr Barber accepted that systems were inadequate and the visit from the traffic policeman had been a useful catalyst for change. I checked that I had been given all the maintenance records and that was confirmed. I then noted that, with inspections specified at ten weeks, the vehicle had been inspected on 11 October 2018, 29 March 2019, 6 June 2019 and 12 September 2019. These were periods of twenty-four weeks, ten weeks and fourteen weeks. Mr Barber told me that the vehicle had not been used over the winter period and that there was now a forward-planner. The driver incident had caused them to re-evaluate everything.
11. The stated maintenance provider was Martin Bennett. Mr Barber told me that the plan had been for him to transfer from Cavendish Liner to the School but that hadn't happened. They were now using FitnFix Auto. Some inspections had been conducted by Lewis Payne who had a garage. There was no policy for brake testing.
12. The company had no facility to download a vehicle tachograph or driver card. The vehicle unit was not locked-in to the company as there was no company card in possession. No analysis had been undertaken. I was referred to a print from the tracking system which I was told the company could use to check on drivers hours and working time.
13. Mr Barber was booked on a refresher course on 11 October 2019. The operator's licence was important to the business but not vital.

The evidence of Chris Evans

14. Chris Evans told me that he had been brought in to the business to reduce the workload on Nathan Barber. He started in the business in November 2017. The lack of legal representation had been a cost matter in the quieter autumn and winter months. A full systems overhaul was underway. The licence was very important to the business and loss would have a big financial impact on the business. He had personally witnessed Nathan Barber's response to the July incident. Nathan had been genuinely shocked and upset. All systems would be in place before the vehicle was used again.

CONSIDERATION AND FINDINGS OF FACTS

15. In relation to the ground in Section 17(3)(aa), that the laws relating to the driving and operation of vehicles used under the licence would be observed, I make the following findings of fact:
- i. The operator caused vehicle BD60SRV to be driven by a driver who did not have the correct driving licence entitlement, contrary to Section 84(2) of the Road Traffic Act 1972;
 - ii. BD60SRV was driven by a driver who was not the holder of a Driver Qualification Card, contrary to Regulation 11 of the Vehicle Drivers (Certificates of Professional Competence) Regulations S.I. 2007/605;
 - iii. There was no valid MOT in force between 26 May 2019 and 22 July 2019. The vehicle was in use on 14 July 2019. It is more likely than not that the vehicle was used on other days in that period too but the company has no systems that may identify which days that was. Each occasion is an offence under Section 47 of the Road Traffic Act 1988;
 - iv. because of the lack of driving entitlement and MOT on 14 July 2019, it is highly likely that any insurance would have been void, contrary to Section 143(1)(b) of the Road Traffic Act 1988;
 - v. There has been no downloading of the tachograph vehicle unit nor the driver card. Sections 97D and 97E of the Transport Act 1968 specify that failure to download driver cards at least every 28 days and vehicle units every 90 days. Failure to do so is an offence pursuant to Section 97F of the same Act;
16. Having made those findings of fact, it is irresistible that Section 17(3)(aa) is made out and I attach significant weight.
17. Review of the operator's documentation today showed that virtually none of the systems expected have been in place. The operator gave undertakings that proper arrangements would be made for ensuring that drivers hours and tachograph rules were complied with. This was a matter that was discussed with Nathan Barber and Marcus Barber when they attended the hearing for the licence grant. I made a specific note of the point in my book. I note from paragraph 9 of my decision in relation to Cavendish Liner, at page 40 of my bundle, that *"no tachograph charts had been analysed for any driving in 2017. It is clear that the arrangements for complying with the rules on drivers hours and tachographs have not been satisfactory"*. It is therefore astonishing to find that no tachograph analysis has occurred at all throughout the 18 month life of this licence.
18. Preventative maintenance inspections have been sporadic. Mr Barber told me that the twenty-four week gap was because the vehicle was not used in the winter months. There is no evidence of any VOR declaration, indeed Mr

Barber seemed not to know what one was. There is no evidence of the vehicle having been statutorily notified to DVLA as off the road (“SORNed” in the colloquial). Between the inspection on 11 October 2018 and the following inspection on 29 March 2019, the vehicle covers 6,582 km, so it was used for a reasonable time in that period. Even following the intervention of PC Burton, an intervention I am told led to a complete overhaul of systems, the vehicle was used from 6 June 2019 until 12 September 2019 with no inspection, a period of fourteen weeks. The call-up letter was issued on 9 September so perhaps that generated concern in relation to the overdue PMI. The inspections conducted in 2018 make no reference to brake performance testing. Mr Barber seemed bemused when I asked him for his policy on roller brake testing.

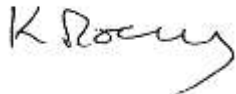
19. It is accepted that driver defect reporting was not in place prior to the July incident. The PMI carried out on 12 September 2019 (incorrectly dated 2018) at 181,047 km identifies both off-side rear tyres as having only 2mm tread. The driver defect report for 11 September, 180,981 km identifies “driver front tyre low tread (*sic*) Off side rear tyre low Trailer electrics not working”. The PMI shows both front tyres at 4mm so it is odd that the driver would defect one of them as being low and not the other. I note the same driver did not notice any worn tyres at all on the 10 September when the vehicle was inspected at 180,899 km. How had two tyres worn so significantly in 50 miles? How had the front off-side tyre then grown 2mm overnight? The PMI records the trailer socket as insecure, not inoperative. It is also remarkable that a driver who had failed to identify any defects at all on the vehicle in the previous eight weeks (when defect reporting started) suddenly identified three defects the day before a PMI. It is hard to resist a conclusion either that the defects on the sheet dated 11 September 2019 have been added – incorrectly - after the event for my benefit, or that the driver was still not recording defects until the operator received the call-up. The lack of consistency between the actual defects recorded suggests the former as a more likely conclusion but Mr Barber denied that when I put it to him.
20. Whatever the case with the driver defect report on 11 September 2019, the licence had been in force from February 2018 until July 2019 with no defect reporting system in place at all. Normally one might expect a restricted licence holder to lack knowledge but that should not be the case here. There have been licences in force for many years. The business, under the Liner name but it is essentially the same business, was subject to a thorough audit in 2017. Proper systems had previously been in place. Why the operator should now so blatantly ignore the most basic of requirements is beyond me. What is clear is that almost no attempt whatsoever was made to comply with the most basic licence undertakings.
21. I am told that the addition of Mr Evans to the team will free-up Mr Barber’s time for transport management. But Mr Evans joined the business in November 2017, before the licence was granted. I am not told of any new resource in to the business since July this year.

22. In revoking the Liner licence, I commented *“For [a new] application to succeed, it will need to demonstrate that it is being led by at least one statutory director who has the time and the inclination to be involved with it on a day-to-day basis,”* and *“Most of all, the applicant management team will need to show me that they care about the transport operation, not as an adjunct to a wider business, but as a public service provider in its own right”*. Neither statutory director has chosen to attend today, placing commercial growth ahead of compliance in their priorities.
23. In Mr Evans’ written statement he says the following:
- “approximately 80% of our business occurs over the months of July and August...During these peak months, and especially the peak few weeks (the 17th of July being the epicentre of that) the atmosphere is one of controlled chaos; management are beset by daily enquiries and requests in the hundred, and we cope calmly and efficiently in the maelstrom. A series of minor emergencies occur and are resolved.”*
24. This is not a description of a competent transport office and it is clear that the use of a vehicle, whose MOT had long-since expired before the busy season described, by a driver without entitlement or professional qualification, who was over the drug-driving limit, who was not having tachograph records checked, who was not recording daily walk-round checks and who was driving a vehicle the maintenance of which was haphazard far from indicates that the management *“coped calmly and efficiently”*. Rather, it reflects a position of total chaos where all management control has failed.
25. In preforming a balancing exercise, I look for positives. The vehicle passed its MOT on first presentation in 2018 and 2019. There have been some inspections conducted, albeit with large gaps and without covering all the items necessary and with major portions of the record incomplete. The operator provided a short statement and bundle of evidence well in advance of the hearing. Nathan Barber is to attend an Operator Licence Awareness Course shortly.
26. These positives do nothing, in reality, to offset the vast negatives. Having been given unfulfilled promises when the licence was granted only 20 months ago, further promises now carry no weight. Even at the date of the inquiry, tachograph downloading and analysis had not begun; the operator had not even acquired the necessary equipment. This is not an operator that I can trust to comply in the future. It will not be put out of business by the loss of the licence but, even if that were to be the case, this is an operation that is so poor that it would need to come to an end in any event. The operator has forfeit its good repute.
27. In granting this small restricted licence, I was giving the business a chance to show that it could run compliantly and professionally. The result has been entirely the opposite and is a strong indicator that Cavendish School of English, and those who run it, should not be in transport. The public, and the students, deserve protection. No parent should have to worry that their

child might be carried in a vehicle that has no MOT driven by an unlicensed driver under the influence of cannabis. It is right that those involved in this business have a significant period of reflection before they consider re-entering the industry. A period of disqualification is in order. In setting it, I have regard to the Senior Traffic Commissioner's Statutory Guidance Document No.10 *The principles of decision making & the concept of proportionality*. Paragraph 100 is most helpful. Whilst this is the first regulatory public inquiry for this licence, the same actors held PH1128666 which was revoked in 2017. The breadth of failings mean this is a serious case. The guidance indicates a period of three to five years. In settling at the lower end of that period, I weigh in the positive the MOT pass rate.

DECISIONS

28. Pursuant to findings under Sections 17(3)(aa) and 17(3)(d) of the Act, the licence is revoked. The vehicle is not currently in use so revocation takes effect with immediate effect.
29. Pursuant to Section 28 of the Transport Act 1985, Cavendish School of English Limited and Mr Marcus Barber are each disqualified from holding or obtaining an operator's licence or being involved in management, administration or control of the transport operations of an entity that holds or obtains such a licence in Great Britain with immediate effect and for a period of three years.



Kevin Rooney
Traffic Commissioner for the West of England
10 October 2019