



## **WESTERN TRAFFIC AREA**

### **Decision of the Traffic Commissioner**

**Public Inquiry in Bristol, 5 September 2019**

**R J BELFITT MINI BUS HIRE LTD**

**PH1123099**

**RICHARD JOHN BELFITT – TRANSPORT MANAGER**

#### **DECISION**

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

Subject to the operator’s acceptance of the conditions and undertakings at paragraphs 33 and 34 below, the decision is as follows:

Pursuant to findings under Schedule 3 of the Act, Mr Richard John Belfitt has forfeit his good repute as transport manager and is disqualified from acting as such until he sits and passes again the transport manager CPC qualification.

Pursuant to findings under Section 17(3) of the Act (as above), the licence is curtailed to three vehicles immediately and indefinitely.

A period of grace to recover professional competence is granted until 25 December 2019

#### **BACKGROUND**

1. R J Belfitt Mini Bus Hire Ltd is the holder of a standard national public service vehicle operator’s licence currently authorising the use of five vehicles from an operating centre in Cinderford. There are three directors, Richard John Belfitt, Stephen Richard Belfitt and Christopher Lee Belfitt. Richard John Belfitt is also the transport manager. The business is engaged in the carriage of children to school.

2. The company returned the renewal checklist in September 2018 and a shortfall in financial standing was identified. Following correspondence, this led to a proposal to revoke and a public inquiry before me on 27 March 2019. Financial standing was not satisfied and a review of compliance documentation provided to me on the day of the inquiry led to wider concerns which I recorded in my decision as follows:

*The company came to attention at licence renewal. Financial standing is not met as of today but I am content with the plan for resolving it as follows:*

- *With effect from 6 April 2019, licence authority voluntarily reduced to 5 vehicles*
- *Period of grace until 27 June 2019 to re-establish financial standing on a permanent basis. This can be extended to a maximum of 27 September 2019 provided there is evidence of vigorous activity to resolve the matter*

*It is clear from discussions with the directors and transport managers that there is no effective tachograph analysis in place. Data is downloaded but nothing then happens.*

*The operator has begun to have roller brake testing undertaken and there is evidence of that on file. The PMIs sheets are littered with driver reportable defects including some which are very serious, such as an emergency exit door warning buzzer not working. Nobody is managing the quality of driver defect reporting – and the directors and transport manager need to lead by example. Relevant training is planned and that needs to be implemented. A regular visit from a transport consultant is also booked. Having recorded an undertaking, I take no further action at this time.*

#### **Undertaking**

*An audit shall be conducted by a competent independent person. The scope of the audit shall include systems for the management of maintenance, driver licencing, drivers hours and working time and the role of the transport manager in line with the requirements of EU Regulation 1071/2009 and STC Guidance. The audit report will be prepared, acted upon and retained for at least 2 years. A copy of the report together with the operator's plans for implementing any recommendations will be forwarded to the Office of the Traffic Commissioner by 27 June 2019.*

3. The audit report was duly received in my office on 25 June. It highlighted significant compliance concerns. The auditor summarised (pg 45 of the PI bundle) “*There are a number of major items that require immediate attention*”. Examples of the shortcomings highlighted include:

- Driving licences were not checked other than by taking a photocopy of the plastic card
- Lack of planned and effective driver training
- Multiple PMI sheets missing which the operator at the time put down to them having been provided for the March public inquiry
- Multiple driver-reportable defects on PMIs
- Many other processes and policies were not in place or not documented

4. These shortcomings caused me to recall the company to public inquiry. Having already made that decision, I became aware that the operator was to be subject to a DVSA maintenance investigation. This had been generated following one of the company's vehicles having been issued a prohibition on 28 March 2019, the day following the public inquiry. The prohibition cited two items:

- A brake hose failed under pressure leading to "*fluid pouring to the ground*"
- Anti-lock braking system indicates a fault "*lamp covered by tape*"

5. The DVSA investigation took place on 28 August and the DVSA examiner passed to my office a copy of the summary findings the following day. The full report was provided on 3 September and served on the operator (who, in any case, had been given the summary findings direct at the end of the vehicle examiner's visit on 28 August).

6. The operator was called to public inquiry in the following terms:

Under Section 17(1)(a) that the holder of the licence may no longer satisfy the requirements of Section 14ZA(2), namely that the licence holder no longer meets the requirement of:

- Section 14ZA(2)(a) to have an effective and stable establishment in Great Britain (as determined in accordance with Article 5 of the 2009 Regulation),
- Section 14ZA(2)(b) to be of good repute (as determined in accordance with paragraphs 1 to 5 of Schedule 3 of the Act),
- Section 14ZA(2)(c) to be of the appropriate financial standing (as determined in accordance with Article 7 of the 2009 Regulation),
- Section 14ZA(2)(d) to be professionally competent (as determined in accordance with paragraphs 3 to 7 of Schedule 3 of the Act).

Under Section 17(1)(b) of the Act and Section 14ZA(3) of the Act, that the nominated transport manager may not be exercising continuous and effective management of the transport operations;

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

- that vehicles would be kept fit and serviceable
- that there would be effective driver defect reporting

Under Section 17(3)(c) of the Act, that vehicles had been issued with prohibition notices

Under Section 17(3)(e) of the Act, material change in relation to financial standing

7. Mr Richard John Belfitt was called to consider his good reputation as transport manager.

### **THE PUBLIC INQUIRY**

8. Mr Richard John Belfitt and Mr Steven Richard Belfitt attended for the company represented by Elizabeth Caple, solicitor. I was provided with a small bundle of operator documents.
9. The oral evidence is electronically recorded and a transcript is available on request; I repeat here only that which is central to my decision.
10. Financial standing was not met. The bank statements showed significant injections of funds on 10, 11 and 12 June which I was told were from Richard Belfitt. Even with those, there was sufficient for only three vehicles. The operator wanted to operate a minimum of four. A quarterly VAT return was due that would bring the amount in the bank up to that necessary for four vehicles, though it would have little impact on a 3-month average. I reserved my decision on financial standing.

### **The evidence of Mr Richard Belfitt**

11. I asked Mr Belfitt about the recommendations of the independent audit (page 61 of my bundle). In relation to registering for the Operator Compliance Risk Score, he had not done so. Driving licence checks had been done in July. Whilst the records before me did not show that the drivers had completed their CPCs, all now had.
12. Mr Belfitt suggested that the missing preventative maintenance inspection records had not been returned after the last public inquiry. I pointed out that the dates of the missing inspections were out with the three months requested for the March public inquiry. The records that were within scope and which I had reviewed were safely back with him. I was offered no further explanation for the missing records.
13. Since the last public inquiry, he had been checking the PMI sheets. The auditor had recommended that he take more time but Mr Belfitt felt he already was. He had spoken to drivers about effective walk around checks but the response was "drive it yourself". He undertook his own spot-checks of vehicles but they were not documented. He had a book to do so but hadn't filled it in yet. Drivers had been given toolbox talks on walk around checks after the audit. The drivers had been there a long time. The business had come a long way since the last public inquiry.

14. He had known nothing of the vehicle being used with the ABS light covered with tape and he was not carrying the can for it. It had caused the family to fall out.
15. I asked why the drivers had completed their CPC renewals so close to the statutory deadline when they had five years to plan for it. I was told they could not get time off.
16. I reviewed the tachograph analysis. I noted that YD09FAU had significant driving with no card inserted at a time that did not correspond with a school run. Mr Belfitt acknowledged the timings seemed to align with a skittles run and had no awareness of, nor explanation for, the lack of use of a card. I noted that the records indicated many occasions of records failing to be kept and, depending on the circumstances, these could be considered false records.

### **The evidence of Steven Belfitt**

17. Steven Belfitt told me of the events leading up to the s-marked prohibition notice on 28 March this year. The vehicle had been submitted for a preventative maintenance inspection on 11 March where it had been found to need welding and ABS work. It had been declared as VOR (vehicle off road). He had covered the ABS light with black tape and taken it to Belfitt's Commercials (run by David Belfitt, a family member but a separate business). Steven had forgotten to remove the black tape. On 28 March, he asked David Belfitt to cover a school run. He had assumed that David would use a vehicle belonging to Crystal Coaches (an operator closely or co-located to him). Richard Belfitt knew nothing of the arrangement. Steven took full responsibility for the tape over the ABS light and the use of the vehicle.
18. I asked about the arrangement with Crystal Coaches. There was nothing formal in place. Each operator helped the other out when need be. Steven Belfitt didn't really know why he had taped over the ABS light. He understood the seriousness of the admissions he had made.
19. In relation to the missing records, five vehicles had been sold following the previous inquiry and he had shredded the records. He realised now that was a mistake. He had now read the DVSA Guide to Maintaining Roadworthiness. The shortcomings found by the Vehicle Examiner were historic. They had come a long way. Recent inspections were all on time and there was proper brake testing.
20. I noted that vehicle YN58CGX had an ABS fault identified at PMI on 18 April 2019 and the fault was not recorded as rectified until 24 April. Driver defect reports identified that the vehicle had been used between those two dates. Steven Belfitt confirmed that was the vehicle he drove. He could not recall the exact position but was certain he would not have driven it had the ABS warning light been illuminated.

## **Closing submissions**

21. Ms Caple told me that Clive Skinner, a transport consultant, had been instructed to assist. Richard Belfitt desired to continue in the transport manager role. He felt there had been a real improvement and he had learned from the public inquiry process. Failing that, the company would request a period of grace of three months to appoint a new transport manager. Mr Skinner would attend twice a month to monitor in any case and this would be three to four times a month if the company was absent professional competence. His visits were about half a day.
22. Ms Caple reminded me that the first inquiry had been primarily about finance and this was the first inquiry for which maintenance was the focus. The findings of Vehicle Examiner Harwood indicated improvements since the audit.
23. The operator had been completely open with me. The s-mark incident had caused a complete family rift. Whilst there was not documentation in relation to cross-hiring to Crystal, there was an informal contra-arrangement.
24. Steven Belfitt had made a serious confession to a serious event. He had been open with DVSA from the outset. Maintenance was now with Forest Commercials who were a good sound maintenance contractor. There was regular roller brake testing. Drivers were aware of the public inquiry process. The operator would offer an undertaking for a further audit if absolutely necessary.

## **CONSIDERATION AND FINDINGS OF FACTS**

25. It is clear that the vehicles have not been kept fit and serviceable. The use of a vehicle marked "VOR" due to corrosion and a defective braking system is inexcusable. That the "excuse" is that the transport manager had no knowledge of the use indicates plainly and clearly that he did not have continuous and effective management of the transport operation. Of course, NB03BCK was in service immediately prior to the PMI that identified the serious safety-critical defects, one of which would have been readily apparent to the driver. Section 17(3)(aa) is well made out as is Section 17(3)(c). Prohibition notices have been issued and for serious defects. Section 17(3)(e) is also made out.
26. The transport manager, Richard Belfitt, had no awareness of the use of the dangerous VOR vehicle on a school service. He told me that he would not "carry the can" for that action. He is the transport manager – if he does not "carry the can", who does? That statement is the clearest of indications that he is unfit to hold his position. If he did now know that a vehicle, which had been clearly identified as dangerous, was being used on a school run, then he was reckless in not asking the simple questions a reasonable person would ask such as "Who is covering the run and in what vehicle?".

27. Richard Belfitt demonstrably had no knowledge of his vehicle being driven without a driver's card on a clearly in-scope journey. He had no knowledge that PMI records were missing and sought to blame that on me or my office when it was obvious from the outset that was not the case. Richard Belfitt has wholly failed to exercise continuous and effective management of this transport operation and his good repute as transport manager and as a director of the business is forfeit. Section 17(1)(a) is made out.
28. Statutory director Steven Belfitt removed a vehicle from the maintenance provider. He applied tape to cover the anti-lock braking system malfunction indicator lamp such that it was not readily apparent to either the driver or passengers on the vehicle. He facilitated that dangerous vehicle being used on a school service.
29. In the positive, he immediately accepted that gross error. I believe he has learned from it. I also weigh in the positive the changes in maintenance and the regular brake testing. The operator engaged effective legal advice and representation and acted upon it (if with less energy than one might hope). In finding that his good repute remains intact, I do so by the finest of margins and, as a former colleague of mine used to say, his good repute hangs by a gossamer thread. He would do well properly to understand what that phrase means.
30. The requirement for financial standing is not met at the current authority. I have no additional evidence to show otherwise. I believe I am offered a voluntary reduction to three vehicles. If that is not the case, then Section 17(1)(a) is further made out and the licence is revoked. It is for the operator to tell me that is its preferred outcome. Before doing so, the operator will wish to note my decision. It will probably appear that I am not offering an option and that would be a reasonable conclusion, but it is necessary in law<sup>1</sup> that the operator volunteer the reduction before I make a decision on financial standing.
31. It is difficult to see how the good repute of the operator can remain intact given my finding in relation to the transport manager who is a statutory director. However, despite Upper Tribunal decisions<sup>2</sup> that criticise this approach, I believe it can, just, be the case. However, it requires that Richard John Belfitt resign as a statutory director and that the operator gives me an undertaking that he will not continue to act as a *de facto* director. I require a statement signed by both remaining statutory directors to that effect. On receipt of that, I will find that the operator's repute remains intact, though hanging upon the same gossamer thread as that of Steven Belfitt.
32. There is much still to do to get this business at a compliant level. A new transport manager should help but I require assurance. In giving this decision to allow the licence to continue, I require an undertaking for ongoing external assurance of compliance.

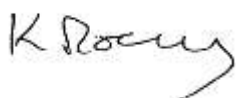
---

<sup>1</sup> T/2017/35 NCF (Leicester) Ltd

<sup>2</sup> T/2017/55 Alistair Walter and T/2019/32 & T/2019/33 C M Coaches

## DECISIONS

33. This decision relies upon the operator accepting and actioning the following within 28 days:
1. Richard John Belfitt resigns as a statutory director
  2. Stephen Richard Belfitt and Christopher Lee Belfitt each sign a declaration that Richard John Belfitt will not be permitted to act as a *de facto* director of the business
34. This decision relies upon the following undertakings being accepted by the operator:
1. Until the operator is professionally competent, Clive Skinner will attend the operator each week to supervise operations. Records will be kept of each visit.
  2. An audit shall be conducted by a competent independent person by 31 March 2020 and thereafter annually. The scope of the audit shall include systems for the management of maintenance, driver licencing, drivers hours and working time and the role of the transport manager in line with the requirements of EU Regulation 1071/2009 and STC Guidance. The audit report will be prepared, acted upon and retained for at least 2 years. A copy of each report together with the operator's plans for implementing any recommendations will be forwarded to the Office of the Traffic Commissioner by the end of April each year.
35. If the requirements of paragraphs 33 and 34 are not accepted and met, I find this is an operator I cannot trust to be compliant in the future. That would cause me to find that the operator no longer has good repute. In that event, the licence is revoked with effect from 31 October 2019.
36. Pursuant to findings under Schedule 3 of the Act, Mr Richard John Belfitt has forfeit his good repute as transport manager and is disqualified from acting as such until he sits and passes again the transport manager CPC qualification.
37. Pursuant to findings under Section 17(3) of the Act (as above), the licence is curtailed to three vehicles immediately and indefinitely.
38. A period of grace to recover professional competence is granted until 25 December 2019



**Kevin Rooney**  
**Traffic Commissioner for the West of England**  
**25 September 2019**