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DECISION OF THE TRAFFIC COMMISSIONER FOR THE NORTH WEST OF ENGLAND

In the matter of the
Goods Vehicles (Licensing of Operators) Act 1995 (The Act)

G S Couriers (Nottingham) Ltd

(OC2010435 / OB2019686)

&

**Mark Scholey
Transport Manager**

Public Inquiry held at Golborne
on 16 October 2019.

Decisions:

G S Couriers (Nottingham) Ltd

On findings made in accordance with Section 27 (1) (a) in relation to the loss of good repute and professional competence, and Section 26 (1) (c) (iii), (e) and (f) of the Act, I direct that the licence of this company (OC2010435) be revoked with effect from 23.45 hours on Thursday 15 November 2019.

I further exercise my power to disqualify this company, and its directors, Richard Gethings-Smith and Louise Gethings-Smith Hughes, from holding or obtaining an operator's licence in any traffic area for a period of 6 months.

I refuse the application by the company in the North Eastern traffic area (OB2019686) in accordance with Section 13A (2) (b) of the Act lack of good repute.

TM Mark Scholey

I record that no action is taken against the repute of Mark Scholey as a Transport Manager.

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Background

1. **G S Couriers (Nottingham) Limited (OC2010435)** is the holder of a Standard National Goods Vehicle operator's licence authorising the use of 3 vehicles (hereafter the North-Western licence). The licence was granted on 18 May 2018. The directors are Richard Thomas Gethings-Smith and his wife, Louise Gethings-Smith: I was told the latter does not play any active day-to-day role in the business.
2. An application was also before me by **G S Couriers (Nottingham) Limited (OB2019686)** for a new Standard National Goods Vehicle operator's licence authorising the use of 15 vehicles in the North-Eastern Traffic Area (hereafter the North-Eastern licence), albeit that at the outset of the Public Inquiry, this application was amended to 7 vehicles. It was further indicated that the earlier expressed intention to offer to surrender the North-Western licence upon grant of the North-Eastern licence had been reversed.
3. Neither the company, nor its directors, had any previous adverse history before the regulator.
4. **Mark Scholey** had been nominated and approved as the Transport Manager (TM) on the North-Western licence from the date of the grant of its interim licence on 23 April 2018. Upon these proceedings being issued, he had been removed from the record.
5. **Laura Pilliner** was nominated by the operator as a TM in respect of the existing licence on 10 June 2019, and subsequently in respect of the new application on 28 August 2019. Formal decisions on those nominations had been held in abeyance until this hearing, although she has been in post and carrying out the role since 7 June 2019.

The calling-in to this Public Inquiry

6. The calling-in to this Public Inquiry was triggered by the circumstances surrounding the operator's licence application in the North-East of England. Those circumstances and the linked history of the North-Western licence were not of the subject of material challenge or dispute and therefore may be conveniently summarised in the paragraphs below.
7. The North-Western licence:
 - a. The original application, signed by director Richard Gethings-Smith, was received at the Central Licensing Office on 1 February 2018. It was stated on the application form (at Section 10) that Jamie Bogg would fulfil the role of TM and confirmed that a TM1 form (dated 31 January 2018) had been completed, which referred to his (Mr Bogg's) CPC qualification;
 - b. It transpired that CPC certificate was not provided when the TM1 form was filed but instead a letter from Jamie Bogg, received on 19 February 2018,

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referred to his CPC certificate having been “lost” by his former employer, although he claimed a replacement had been requested;

- c. A subsequent email from Jamie Bogg dated 6 April 2018 was to the effect that the examination board, OCR, had informed him that his CPC certificate “could not be found”. In substitution though, the operator through Mr Bogg applied for Mark Scholey to be nominated as TM (in place of himself) and the relevant CPC certificate for Mr Scholey was furnished;
- d. Mark Scholey was subsequently approved as TM, and the North-Western licence was granted on an interim basis on 23 April 2018 and substantively on 18 May 2018;
- e. Mark Scholey has subsequently denied any knowledge of the application for, or his appointment as, TM for G S Couriers, until receiving the calling-in letters for this Public Inquiry;
- f. On 10 May 2019, the operator had (again) submitted a TM1 application to add Jamie Bogg to the North-Western licence (and simultaneously nominated him in respect of its new North-Eastern application – see paragraph 8b. below). Enclosed were the details of the contract between the operator and Jamie Bogg, together with a CPC certificate apparently bearing his name;
- g. Meanwhile, on 7 May 2019, DVSA had commenced a routine investigation to establish whether there was compliance with the undertakings attached to the North-Western licence. Traffic Examiner (TE) Cotgreave had requested raw data for each of the 3 vehicles specified on it, together with each of the drivers’ digital data. Examination of the data provided, led the TE to conclude that the operator was running more vehicles than were specified on the operator’s licence. This was denied by Mr Bogg but following further review the TE concluded that as many as 9 vehicles were being operated. Despite reaching this conclusion, when the TE visited the operator on 21 June 2019, he recorded a “mostly satisfactory” Traffic Examiner Operator’s Report (TEOR);
- h. The TE also found that the vehicles described were being operated from a different operating centre. The change had not been notified, nor had an application to change been made at that time, although one had been made at the date he prepared his witness statement. (An interim authority to regularise the position has subsequently been granted.)

8. The North-Eastern licence application:

- a) On 21 January 2019, a completed application was received for a new licence in the North-East of England. Initially Mark Scholey was proposed as the TM but concerns then raised by the Central Licensing Office referred to whether Mark Scholey had a genuine link to the operator as required by Regulation (EC) 1071/2009 and outlined in Paragraphs 34 & 50-53 of Senior Traffic Commissioner’s Statutory Guidance Document 3: Transport Managers. Those concerns also related to the apparent provision of transport manager

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services by third party, namely JFE Commercial Services (Jamie Bogg's business trading name). A decision was made to hold a Preliminary Hearing in order to give further scrutiny to the proposed TM arrangements;

- b) In response however, a further TM1 form was filed on 10 May 2019, wherein Jamie Bogg was himself nominated as the TM and a CPC certificate apparently in his name was produced. What were then termed "discrepancies" were noted by staff, both in the fonts used and the layout of the CPC certificate. It was also recognised that the certificate number, which always incorporates the date of birth of its holder, did not do so in respect of the certificate produced for Mr Bogg. There were serious concerns that it was not a legitimate CPC certificate;
 - c) The decision to hold a Preliminary hearing was then set aside and the operator, with those who were, or appeared to be TMs, were instead called to Public Inquiry.
9. The calling-in letter referred to the failure to fulfil statements made on application for the North-Western licence, breach of the undertakings to keep vehicles fit and serviceable and to observe rules about drivers' hours and the issue of a fixed penalty, as well as material change relevant to holding the licence.
10. The proceedings in respect of the new application referred to concerns about the need for the operator to have in place satisfactory arrangements to comply with the law and proper facilities and arrangements for maintaining vehicles in fit and serviceable condition.
11. Matters raised (for both the current licence and the new application) were such as to bring into question whether the operator had/retained its good repute, financial standing and professional competence.
12. Mark Scholey, the company's TM was called before me in respect of his good repute, as well as Jamie Bogg, in the event that it transpired that he did hold qualification as a TM.

The Public Inquiry

13. So it was that the operator and TMs came before me at Public Inquiry at Golborne on 16 October 2019. Director Richard Gethings-Smith attended with Andy Akers, the company general manager; also present was Laura Pilliner, the proposed TM on both licences. They were represented by Chris Powell, solicitor.
14. Mark Scholey was present: he was unrepresented.
15. Jamie Bogg was absent and none of the parties knew of his whereabouts. A series of emails from him were included in the paperwork before me.
16. Having heard the evidence in full and determined to issue a written decision. Whilst this decision is dated well within 28 day period permitted for the completion of such adjudications, regrettably it is beyond the short period, during which I had indicated that I hoped and expected to conclude the matter. I offer my apologies for this.

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The evidence

17. The contents of TE Cotgreave's evidence contained in his written statement was accepted by the operator.
18. Richard Gethings-Smith had produced a detailed written submission for which I was grateful.
19. It was the evidence of the operator's director, Mr Gethings-Smith that:
 - The company is engaged in courier and delivery work on behalf of a series of major parcel distribution companies. There were said to be 26 employees together with 60 to 85 sub-contractors. Whilst the business had initially been able to operate with 3.5 tonne vehicles, after taking on a new franchise in November 2017 this had necessitated the deployment of a larger vehicle in scope of operator licensing. He described his knowledge of operator licensing at that time as being "non-existent" and that he had planned to "outsource" the management of that activity and therefore placed an advert for a TM. Pressed by me, he accepted that he had prepared himself "very badly" to be a director of a licence holding company, although at one point he was also seeking to argue that he thought "it was the company that held the licence not (him)";
 - He told me Jamie Bogg had offered his services and a substantial fee had agreed with him to oversee the licence process. He described Mr Bogg as "very credible", talking as though he had knowledge and that he had gone on to deliver everything that was expected of him with "no red flags". Asked by me about whether he had seen any *positive* evidence that things were as they should be with the operator's licence, (as opposed to having no cause for concern), I was told that such was the confidence in him that "there was no need to look for anything". Mr Gethings-Smith did however admit that at the material time, there was 'firefighting' going on in a different side of the business;
 - Asked about due diligence in the process of appointing Mr Bogg, it was offered that he had been one of three persons interviewed and that upon Mr Bogg's appointment, he had obtained a "glowing" telephone reference for him from a former employer, The Mark Group Limited, where it was said he had held a similar role. He accepted with the benefit of hindsight that everything he had been told was "a complete lie", but the company had been "blinker" in its dealings with what he now described as "a fraudster and conman". He maintained that he had undertaken "as many due diligence checks as he could" including looking at Mr Bogg's website and the reviews contained there;
 - The director described his personal management style the time as "loose". He said he had not favoured "micro-management" of those who had claimed to be experts and were employed as such. Pressed by me, he acknowledged that he did not supervise Mr Bogg and that he "took everything at his word";
 - He said his personal involvement in the application process for the North-Western licence from January 2018 had included signing cheques, as well as, seeing and signing the application form but it transpired that only the back (or

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signature) page of it was placed before him, not the rest of it. Pressed to explain why he did such a thing and how by such means he could have honoured the terms of the caption, which reads:

'I declare that the statements made in this application are true and that all supporting evidence supplied with regard to my application it's correct. I understand that it is an offence to make a false declaration.'

he could not provide any credible response; beyond that he had relied on and trusted Mr Bogg. He said he did not normally sign documents without reading them;

- He said he had been told by Jamie Bogg “within a couple of weeks” of the application being made that an interim licence had been granted and he had immediately briefed the franchisor in reliance on it. He believed that from that stage Jamie Bogg to have been appointed as TM and that the business was thereafter able to operate 3 vehicles from February 2018. He only later became aware that the North-Western licence was not in fact granted until 18 May 2018 and that Jamie Bogg had never been approved as TM;
- He said he had requested Mr Bogg to make a further licence application in May 2018 to increase the number of vehicles that could be operated, as business demand had grown. He told me that in late May 2018 he had been assured by Mr Bogg that the necessary authorities to enable the business to operate up to 15 vehicles had been obtained, although he said that a maximum of 9 vehicles had been used thereafter. He acknowledged he had no appreciation of the requirement for vehicles to display operator’s licence identity discs in the cabs of each of them;
- He had been told that his general manager, Andy Akers, had himself signed a second TM1 application form but again that this had done without him having access to any more than the signature page. He had only subsequently become aware that this application was the one which had subsequently led to the purported appointment of Mark Scholey as TM;
- He said that a decision had been made in July/August 2018 to withdraw from a business franchise arrangement, which had led to a move to smaller premises; that is from the nominated Sandiacre address to The Clocktower. He had tasked Jamie Bogg to make all the arrangements and to change correspondence addresses and update records but that it had never been appreciated by him that the new operating centre was in the North-Eastern traffic area, and therefore required a new licence. This use of the unlawful operating centre had ceased upon the advice of Laura Pilliner, once it had been discovered that no change application had been made;
- He described Jamie Bogg as being “very good at avoiding the subject” and that - as an example - he had been fobbed off when one of company’s clients wish to see a copy of the operator’s licence;

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- He declared that it was only when he was contacted by the Central Licensing Office in March 2019 that he had come to appreciate that the nominated TM on the licence was in fact Mark Scholey and not Jamie Bogg, as he had been led to believe. Nevertheless, he said that as Mr Bogg had come up with a “feasible excuse” to the effect that he had sub-contracted his responsibilities, as he was at that time a TM on too many licences for him to do it personally, he permitted the arrangement to continue;
- Whilst he had thereafter demanded to see and to speak with Mark Scholey, he had never done so (until meeting him at the Public Inquiry), having been told (amongst other things) that Mr Scholey’s wife was ill with a heart condition;
- When Mr Scholey had not attended at two planned meetings with the director in April 2019, Jamie Bogg had then offered that his own circumstances had changed and that he was once again available to hold the TM position himself. His offer to do so had been accepted by the director and had also taken him on as a part-time employee of the company, to further assist with the North-Eastern application;
- Subsequently, the director said that a hard copy of an operator’s licence for 15 vehicles in the North-Eastern traffic area had been produced to him by Jamie Bogg. Mr Gethings-Smith accepted that its supply to him came with a clear admonition from Jamie Bogg “not to show a copy of it to anyone”. A copy of an operator’s licence purportedly granted in respect of the North-Eastern application and dated 18 April 2019 was produced by him during the hearing. There was acceptance that it was a forgery. No such application having been granted. *(Subsequent close examination of it has confirmed that the “licence” also carried reference to its purported issue by the incorrect office, i.e. the Office of the Traffic Commissioner for the East of England.)*
- In June 2019, he said that having become “annoyed” and believing that the company was looking “incompetent”, and he had become aware that the Office of the Traffic Commissioner was investigating a suspected fraudulent document had been produced, there had been a showdown with Jamie Bogg. He had denied any wrongdoing, but his contract was then terminated, and arrangements were made to take on the Laura Pilliner in his place, as TM.
- As at the date of the Public Inquiry, the operator offered assurance that it was using only an 18 tonne vehicle and 7.5 tonne vehicles x2 under the North-Western licence. The business **[REDACTED]** because of its need to hire-in small vehicles and the additional fuel costs associated with double or triple runs being required.
- Mr Gethings-Smith said he had undertaken the TM CPC course in September and awaited the results due in late October (I have subsequently been told that he passed the examination). He said that his general manager, Mr Akers was to take the same course shortly. He offered that he had taken a step back from other responsibilities to concentrate on the licence. As part of his learning he said that his management style had changed and that he now “questioned and questioned”.

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20. In her evidence Laura Pilliner said:

- a) Said she had joined the company on 7 June 2019: this would be her first TM appointment. Believing at the time and that her employer had authority for the 9 vehicles in use, she had soon discovered this was not the case and arranged to have them removed from use immediately. She described a good relationship with the director based on high levels of communication;
- b) Pressed to explain why, since her appointment, none of the preventive maintenance inspection reports disclosed any measured testing of brake performance, Ms Pilliner referred to her belief that this was only necessary at annual test.
- c) She assured me that all maintenance inspections had been carried out to the six-week timetable. Subsequent examination of maintenance records produced the following discrepancies:

RX13 GHV

Stretched frequency of 7 weeks in period from 7 January to 5 March 2019;
Stretched frequency of 7 weeks in period from 30 May to 18 July 2019;

RV63 TGE

Vehicle never specified on the operator's licence
No inspection records since 30 July 2019;
Stretched frequency of 4 months in period from 7 January to 1 May 2019;

RX13 FBN

No inspection records since 26 July 2019 yet vehicle only removed from the operator's licence on 26 September 2019, (over 7 weeks later);

21. In his evidence Mark Scholey:

- Admitted getting to know Jamie Bogg as a health and safety adviser to a licence holding company, Pink Parrot Holdings Ltd, where he had been a director, some two years earlier. At that time, during the process of application for FORS recognition, which Mr Bogg assisted with, he had been given a copy of his (Mark Scholey's) CPC certificate;
- Subsequently, he said he recalled a conversation with Mr Bogg, "well over a year ago" in which he was invited to indicate whether he would be prepared to be a TM for a firm in Nottingham, which were not named to him. He told me that about 6 months later in April 2019, he had followed up on the conversation with Mr Bogg only to be told that such a prospect would not be taken forward;
- The next thing he had known was being called up to Public Inquiry for a role as TM that he knew nothing about. His attempts to establish from Mr Bogg what had happened had been unsuccessful and he knew nothing of his appointment as a TM;

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- He did not recognise his signature on the TM1 form, which had been submitted for the G S Couriers licence. He had never carried out the role, or received any money for it, or previously met anyone from the company. He maintained that his original CPC certificate remain safely in his office;
- In short, he did not believe he had done anything wrong.

Submissions

22. In his closing submissions, Mr Powell invited me to accept the explanations given in the written submissions provided. These referred to an acceptance of the director delegating too much, a lack of knowledge on his part or experience of goods vehicle operator licensing, which in turn had led to the business not having the confidence to challenge Mr Bogg on what turned out to be his false assertions and explanations.

23. A strategy had been put in place to improve knowledge by the director undertaking the TM CPC, the general manager would do the same and the appointment of Laura Pilliner. It was contended that the company could now be judged to have a full and detailed knowledge of its responsibilities and had “placed compliance at the heart of its business”.

24. I was asked to accept that each of the failures in compliance occurred without knowledge of the director.

25. Whilst Mr Powell acknowledged that the described brake testing arrangements were inadequate, he offered undertakings in respect of future testing and if required, the commissioning of a compliance audit. He argued that the issue of a formal warning would meet any need for regulatory action in what he described as “circumstances that were quite unusual”.

Findings, consideration and conclusions

26. I have subsequently reflected on the evidence that I read and heard:

- a) I found the unchallenged written evidence of TE Cotgreave to be balanced and credible and accepted it.
- b) I found the evidence of Mark Scholey to be measured and credible. I accepted that he knew nothing of his appointment as TM.
- c) I treated the written evidence of Jamie Bogg (dated 21 and 27 August 2019) with the utmost caution in the light of its contents, that it had been preceded by earlier categorical denials of responsibility for wrongdoing and in the absence of any opportunity to question him.
- d) I accepted the evidence of TM Laura Pilliner.
- e) I found the evidence of Richard Gethings-Smith for the most part to be open and transparent. I do however conclude that he much underplays his responsibility and offers excuses, which only serve to evidence a clear

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abrogation of his responsibilities as the director of a licence holding business.

27. I made the following specific findings:

- a) The enforcement history of the operator was limited to a single encounter with DVSA in late 2018, during which an immediate prohibition was issued for a tyre cut to the cord and an offence prohibition for a tachograph not properly fitted. The MOT pass rate at first presentation over the life of the licence is however worse than the national average. The operator had an Operator Compliance Risk Score (OCRS) of Red/Red.
- b) Whilst the safety of vehicles on the road is not the primary consideration in this decision, of the context for making includes concerns about brake performance testing, the MOT pass rate, stretching of maintenance frequencies.
- c) I accept that it was more likely than not that Mark Scholey was unaware that Jamie Bogg had used a copy of his TM CPC certificate to make a false application for his (Mark Scholey's) appointment as TM on the licence. I accepted as genuine his explanation that he had provided a copy of the certificate during a period when Mr Bogg was assisting in making a FORS accreditation application.
- d) I find that Jamie Bogg nominated Mark Scholey as TM without admitting the true circumstances to the director, whilst purporting to carry out the role himself.
- e) I find that the North-Western licence was granted on a false premise. It was believed that a professional competence for the licence was being met by the appointment of Mark Scholey, when this was not the case.
- f) I find that Jamie Bogg gave a false indication to the director that the North-Western licence had been granted in February 2018, when the records show it was not obtained until some 3 months later in May 2018.
- g) I find that Jamie Bogg had given a false indication to the operator in May 2018 that they could operate more vehicles than they were entitled to, by telling the operator that the further application had been granted, when this was not the case.
- h) I find that Jamie Bogg had given false indication to the operator that it was enabled to operate large goods vehicles from the Clocktower, when no such authority had been given by the Traffic Commissioner at that time.
- i) I find that operator's licence document produced during the hearing for a North-Eastern licence and dated 18 April 2019 to be a false document. Records show no such licence has ever been issued.
- j) I find, as was admitted, that through director, Richard Gethings-Smith the company unlawfully operated more than 3 but not more than 9 large goods

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vehicles outside of the terms of the North-Western licence from May 2018 until June 2019.

- k) I find it more likely than not that the TM CPC certificate produced in the name of Jamie Bogg to be a false document. The format of the document produced does not meet that of other certificates produced at that time. Whilst Jamie Bogg makes no admissions about that matter, his indication in August 2019 that he was “saving the money up to attend the Transport Manager’s CPC course” points to acceptance by him that he does not hold such a qualification.
- l) I find, as was admitted by him, the director had so little knowledge of operator licensing that he was manifestly ill-equipped to meet the undertakings he had signed up to, he exercised no supervision of Mr Bogg and never sought positive any affirmation about the grant of the licence.
- m) I find his personal failure to exercise even the most basic checks of the application form, to allow his manager to take the same approach and to ignore the critical caption statement of business practice (referred to in paragraph 19) represent wholly reckless failures, entirely unbecoming of a licence holder and entirely reprehensible.
- n) I am satisfied his subsequent conduct and the failure to make proper enquiries were such as to allow himself to be duped by Jamie Bogg and to be “fobbed-off” for long periods, such that the holding of an operator’s licence obtained by a deception continued for much longer than ought to have been allowed to be the case. The prime example of this being when he found out that Mark Scholey was in fact the nominated TM yet still allowed the arrangement to persist for some weeks. I find his description of finding Mr Bogg’s explanation as being “feasible” as incredible when considered against the background of a misrepresentation which had continued from January 2018 to March 2019.

28. I find that there are grounds to take action against this licence under Section 26 (1) (c) (iii), (e), (f) of the Act.

29. Turning to Section 27 of the Act, and whether the operator retains its good repute, I find that on any analysis, this is a bad case. A licence has been permitted to operate unlawfully and anti-competitively through a deception for a long period. Whilst I find that Mr Gethings-Smith would probably have been unaware, at least initially, that he had taken on someone who would carry out the deceitful acts that he did, his inadequate business practices and subsequent repeated failures to get to the truth were such that he did not recover the position when he could have done.

30. 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.

31. 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

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holding or obtaining operator's licences is reserved for categories of case falling into the definition as warranting "severe" action being taken.

32. Descriptions of conduct including the following features are described as having a starting point of the delivery of "severe" action:

"Deliberate or reckless acts that have compromised road safety and gave the operator a clear commercial advantage and/or permitted driver offending and/or any attempt by the operator to conceal offences or failings."

33. I have weighed together the positive and negative features of what I heard.

34. I have referred to the positive features above, including the absence of previous adverse history, albeit the circumstances raised here persisted from the very start of the licence. I take account of the fact that since soon after June 2019 the operator has been compliant with licence expectations and there is no suggestion that vehicles have operated unlawfully since then. I take at face value that there will have been a significant impact on profitability in that period.

35. I acknowledge the director's desire to continue to operate the business and provide employment for its staff.

36. The following negative features from the indicative list are relevant to my consideration:

- a) Deliberate and/or reckless act/s by operator and/or drivers that led to undue risk to road safety or unfair commercial advantage
- b) Ineffective management control and insufficient or no systems and procedures in place to prevent operator licence compliance failings
- c) Insufficient and/or ineffective changes made to ensure future compliance

37. Having weighed these matters together, I find that the negatives set out much outweigh the positives. 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.

38. 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.

39. The failings are significant and the legitimate industry would rightly be concerned if in the circumstances outlined, an operator were able to retain its repute in such a case as this, where trust in an operator has been so undermined.

40. I have addressed myself to the specific contention that such positive change has been effected in the business that I can already be satisfied that there will be compliance in the future. In effect, I am asked to conclude that the failures have been "cured" and that the licence may continue because the experience has been a

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seminal one, there is a much greater understanding of the operator licensing regime (via CPC qualification of the director) and a legitimate TM is now in post. I do not share the view that such a proposition is a valid one.

41. Taking all of these matters into account, 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. It is acknowledged that the impact of revocation is either the ending of the business or at the least a significant scaling back to an arrangement capable of being operated without large goods vehicles.

Decision:

G S Couriers (Nottingham) Ltd (OC2010435)

42. I record that in the circumstances described the repute of this operator has been lost.

43. I direct that the licence of G S Couriers (Nottingham) Ltd (OC2010435) be revoked with effect from 23.45 hours on Thursday 15 November 2019, in accordance with section 27 (1) (a) of the Act – lack of good repute and professional competence.

44. I stress that the finding of lack of professional competence refers to the period of the licence from its inception through until June 2019, and does not refer to the period, during which Laura Pilliner has subsequently acted in the role: she had not been approved as TM in that period. The licence having now been revoked, her application for appointment now falls away.

45. For the avoidance of doubt that revocation is also directed on the findings already made under Section 26 of the Act above. This short delay before revocation is designed to facilitate an orderly closedown or retrenchment of the business.

46. I have applied my mind to the exercise my power to disqualify the company and, its directors from holding or obtaining an operator’s licence for a period. Such are my findings that a relatively short period out of the licensed regime may be appropriate as far as this company is concerned. I set down the period of disqualification for both at 6 months. On balance, I conclude that the disqualification for Richard Gethings-Smith and Louise Gethings-Smith may be for the same period of 6 months.

47. If he or the company do intend to seek to return to the industry at some future stage, I suspect that any Traffic Commissioner considering such an application would need to be satisfied that business structures are such as to allow for there to be the prospect of rigorous and active challenge at board level, basic yet fundamental business practices are in place including appropriate due diligence arrangements and that there is demonstrable learning from this fiasco.

48. As far as the new application is concerned, I refuse this application in accordance with Section 13A (2) (b) of the Act.

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49. The consideration of repute on a new application is of course a different one to that I have undertaken in revoking a licence. As was said in the Aspey Trucks Upper Tribunal case:

“(A traffic commissioner will be) deciding whether or not to give his official seal of approval to a person seeking to join an industry where those licensed to operate on a Standard National or Standard International basis must, by virtue of S.13(3), prove upon entry to it that they are of good repute. In this respect, Traffic Commissioners are the gatekeepers to the industry – and the public, other operators, and customers and competitors alike, all expect that those permitted to join the industry will not blemish or undermine its good name or abuse the privileges that it bestows. What does “Repute” mean if it does not refer to the reasonable opinions of other properly interested right-thinking people, be they members of the public or law-abiding participants in the industry”?

Against the background I have described, the operator has failed to demonstrate its good repute. My trust in Richard Gethings-Smith to do that which would be expected of him is absent.

Mark Scholey

50. I make no adverse finding against the repute of Mark Scholey as a Transport Manager.

Jamie Bogg

51. Since it is my finding that Jamie Bogg does not hold TM CPC, I conclude that I have no power to make any a formal direction in respect of him. I am however directing that a copy of this decision (redacted as necessary) is appropriately forwarded to his email address.

52. As the regulator, I derive some small comfort from the passage contained in the attachment to his email to my clerk dated 21 August 2019, which reads:

“I no longer operate in the transport arena and do not intend to in the near future.”

Much of that comfort however is undermined by the following sentence, which reads:

“I am saving the money up to attend a transport manager CPC course to amend my errors and prevent them occurring in the future and I hope the Traffic Commissioner will accept this as a way of me putting my mistake right.”

Whilst it will always be the case that applications up for nomination for appointment as TM will be considered on a case-by-case basis and determined on their respective facts, it would be remiss of me to fail to point out that simply passing of the CPC examination would be unlikely to be enough. The nature and extent of the

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sort of deception perpetrated in the circumstances described above represent a very significant hurdle for any applicant in seeking to evidence their good repute. It follows that it may be that such an applicant ought to seek to follow a different career path.

A handwritten signature in black ink, appearing to read 'Simon Evans', written over a horizontal line.

Simon Evans
Traffic Commissioner
for the North West of England
31 October 2019