



**DECISIONS OF THE TRAFFIC COMMISSIONER
FOR WALES**

Victoria Louise Paul t/a VP Haulage – OG2014829

Goods Vehicles (Licensing of Operators) Act 1995 (“the 1995 Act”)

Decisions made in respect of Victoria Louise Paul t/a VP Haulage OG2014829

1. The operator continues to meet the requirement relating to having sufficient financial resources, I do not make an adverse finding on this issue.
2. An application to change the operating centre to Sea View, Broad Street Common, Peterstone, Wentlooge, Cardiff CF3 2TN is refused
3. Since the licence was granted there has been a material change in the circumstances of the licence holder as there has been a change of entity of the licence holder, section 26(1)(h) of the Act
4. The holder of the licence is no longer fit to hold an operator’s licence, section 26(1)(h) of the Act.
5. The operator’s licence is revoked w.e.f. 4th November 2019
6. Victoria Louise Paul is disqualified under section 28 of the 1995 Act from holding or applying for an operator’s licence in any traffic area, the disqualification is for a period of 18 months from the date of revocation

Background

7. A restricted goods vehicle operator's licence was granted to Victoria Louise Paul ("Victoria Paul") in November 2018 with authority for three vehicles. An application was submitted in March 2019 applying to change the operating centre, checks by licensing staff revealed familial links with a disqualified operator. Accordingly, a public inquiry was convened to establish whether Victoria Paul's licence was obtained with view to circumventing an order of disqualification under section 28 of the Act.

Public Inquiry

8. In attendance at the public inquiry held on 12 August 2019 were:

- Victoria Paul
- Paul Carless, specialist transport consultant representing the operator
- Paul Davies, consultant who produced a maintenance report for the operator

9. At the conclusion of the hearing I advised that I would be producing a written decision after receipt of a transcript (which was received a month before this decision was produced). I reminded the operator that pending my decision she did not have authority to operate from the proposed new operating centre, which was her father's premises. An application for interim authority had earlier been refused by me. Victoria Paul told me that she no longer had authority to use the registered operating centre, she was reminded that if this remained the case she had no authority to operate pending my decision.

Evidence

10. Before preparing this written decision, I have reviewed the following:

- Written public inquiry brief for Victoria Louise Paul t/a VP Haulage
- Contemporaneous handwritten notes from the hearing;
- A transcript of the hearing;
- Evidence and representations given to me during the hearing;
- Written representations sent to me after the hearings;
- South Bucks District Council and another v Porter (FC) (2004) UKHL 33 in relation to written decisions generally; and,
- Aside from those quoted below, various authorities in relation to the approach to regulation, fitness, proportionality, entities and the burden of proof. – Thomas Muir (Haulage) Ltd v Secretary of State for the Environment, Transport and Regions (1999) SLT 666; Crompton trading as David Crompton Haulage v Department of Transport, North Western Area (2003) EWCA Civ 64; Muck It Ltd and others v Secretary of State for Transport (2005) EWCA Civ 1124; 2009/225 Priority Freight Ltd and Paul Williams; Fenlon 2006/277; Skip It (Kent) Limited 2010/277; and, 2002/217 Bryan Haulage (No. 2).

11. It was established that Victoria Paul was the daughter of Anthony Parsons, an individual who was made the subject of an indefinite order of disqualification under section 28 of the Act following a public inquiry held in May 2019. The record of that decision included very critical comments about operator compliance. Victoria Paul

confirmed that she knew about the order of personal disqualification relating to her father.

12. Preliminary submissions on behalf of the operator indicated a concession that she was utilising a lorry park without formal permission. It was explained that she no longer had authority to utilise the recorded operating centre and sought to change operating centres on a permanent basis to premises at Sea View, Broad Street Common, Peterstone Wentlooge Cardiff CF3 2TN. I was told that pending a decision on the application, the operator was using a lorry park.

13. It was explained that the operator's father, Anthony Parsons, had a waste management station, but at the commencement of the hearing I was assured that he had "*no role at all*" in the business.

14. The operator's business involved collecting household rubbish utilising skips and delivering them to Anthony Parsons' waste management station.

15. Although the recorded maintenance provider was J&J Commercials, an individual called "Glyn" undertook maintenance too.

16. The operator met the legal requirement relating to having sufficient financial resources, access to £6,500 being required, however the bank statements provided to me did not reflect those of a typical transport business. Most of the payments reflected that of a private individual with relatively modest sums for food and other household expenses. There were substantial four figure payments in from A T Parsons, who it was established was Victoria Paul's father, Anthony Parsons.

17. Analysis of the bank statements confirmed that they included regular payments for vehicle road tax, vehicle insurance and to a company that I was told dealt with tachograph analysis. Whilst there were relatively modest payments for fuel, they did not reflect what I would have expected from the business that was before me.

18. There was no evidence in the bank statement of payment for drivers or for maintenance.

19. The maintenance records produced showed an average of 3000 km every six weeks, with three vehicles this would amount to 9000 km. If fuel usage was based on an average of about 12 miles to the gallon, payments for fuel did not appear to reflect actual usage. The only fuel payment shown on the bank statements was for less than £1,200. On this being put to the operator, I was told that the evidence from bank statements was not disputed. I indicated that I was also looking for evidence of payment for the six weekly PMIs.

20. Victoria Paul showed to me a piece of paper with typing "*Contract hire for staff/driver, date, staff member, driver name, total hours per week worked for VP Haulage. Total amount owed to Anthony Parsons.*" On my asking what that related to, I was told by Victoria Paul that this covered wages which her father was still paying until the drivers went onto her payroll.

21. I expressed concern as to who was actually operating the licence, Victoria Paul's father had been disqualified but was employing drivers. I pointed out the EA Scaffolding case which referred to criteria to ascertain who was an operator. Whilst Victoria Paul paid for insurance, the drivers were paid directly by an individual who was subject to a section 28 disqualification.

22. Victoria Paul claimed that she would address employment of drivers when she applied to regulate matters through a limited company that she had set up, VP Ltd. As an aside, I comment that a couple of days prior to completing this written decision I received a submission from the licensing team in Leeds as a result of an application being made by VP Ltd.

23. On my pointing out to Victoria Paul that she was wanting to use premises owned by her father as an operating centre and that she did not have expertise to run an operator's licence, furthermore it appeared that her father was running everything, she responded, "*It just seemed ideal at the time.*"

24. I was then shown an agreement between the operator and her father about transferring monies for vehicles and skips, it appeared to be a payment plan for Anthony Parsons to sell his vehicles to his daughter. It was pointed out that the terms of payment were such that her father had virtually given the vehicles to her. At this Victoria Paul told me "*Yeah. And he knows I'm starting off and I suppose he is my dad at the end of the day*" she went on to tell me that she knew that her father had "*done everything wrong*" but she "*was trying to do everything right*".

25. Victoria Paul told me that her accountant advised her that she needed to get the drivers onto her payroll, but she told him that she wanted to await the outcome of the hearing before me.

26. I put to Victoria Paul that she was not employing the drivers, although she claimed that technically she was because she was covering their wages from her father. However on my asking whether she had a contract of employment for the drivers it was confirmed that she did not. I also asked whether her father had a contract of employment with his drivers and was told by Victoria Paul that she did not know.

27. I pointed out that I had previously been told that Victoria Paul's father had nothing to do with the licence, but he was employing the drivers.

28. I asked why Victoria Paul did not just employ drivers herself from day one in taking over the business, the response was "*I think it was just a case of it's not broken like, you know, don't fix it at the moment*". She then told me "*I think I've just been concentrating so much on the vehicle side of it, making sure that they're up to standard.*"

29. As a result of this comment I reminded Victoria Paul that I had not seen evidence of her paying for maintenance. At first Victoria Paul told me that she should have brought the receipts for them, but when I asked whether this related to the same bank account, she told me that most of her maintenance costs were paid in cash. On my pressing her about this Victoria Paul spoke with her advocate, I then requested that she answered my question about maintenance payments. The transcript of evidence

confirms my recollection that she was equivocal until eventually she said: *"It's cash. A lot of it is... most... Well everything I've paid for is cash. When they've gone in for their six weekly checks and things like that and other than, you know, the odd lightbulb which is been replaced it's mainly cash."*

30. On my questioning her motive for paying in cash Victoria Paul told me: *"I try not to have a lot of... Well when the money comes through, again I, I got to be careful, I'm still going through a divorce-well I've not started it yet, and again which is why I'm waiting for the limited company to come in."*

31. Victoria Paul did not accept my suggestion that she appeared to be avoiding her husband having access to monies by operating on a cash only business, she went on to tell me *"a lot of the business is cash."*

32. Further explanation confirmed that payments were cash on delivery with clients preferring to pay in cash. Most of the work involved regular customers of Anthony Parsons who paid cash to the driver.

33. On my asking where Victoria Paul accounted for cash paid to drivers, she failed to answer, suggesting that at the moment she was not taking a lot. However this was contradicted a few moments later when she told me that *"some of it goes back to my dad because I'm hiring the vehicles"*. When I asked for the cash book showing monies that went in and out, I was told that it did not exist.

34. When pressed about business records, Victoria Paul told me that she kept a log of what skips go out. I then asked how she knew how much money she should be receiving. At this point Victoria Paul admitted that she did not keep a log of money *"I suppose I am learning. I've taken over mainly just the, the vehicle side of it."*

35. On my asking what happened when a customer asked for an invoice, I was told that a receipt was given, it could be sent in the post. Unfortunately I could not glean any work payment details from the three months of bank statements provided by Victoria Paul.

36. Large transfers were shown going in and out of the bank account involving Anthony Parsons. Victoria Paul explained that she invoiced her father. The arrangement was to keep his regular clients happy; she told me that she undertook work involving his regular clients, but some would only deal with him.

37. In an attempt to have confirmation of the arrangement, I put to Victoria Paul that her father's clients dealt with her father which meant that they paid him direct and that he reimbursed her. She agreed that this was correct.

38. It was explained to me that Victoria Paul was due to attend an operator licence awareness course. It was suggested that this would result in higher standards of compliance.

39. A report was given to me from a local consultancy run by a former vehicle examiner, Paul Davies, he had been contacted to assist after receipt of the call in letter

for the public inquiry, Paul Davies confirmed that whilst there were some records and systems, it was not wholly satisfactory and he made a number of recommendations.

40. It emerged that one driver (an individual who caused significant problems for Anthony Parsons culminating in the order of revocation) still undertook driving work for Victoria Paul.

Material considerations and findings of fact.

41. Aside from those cases referred above, I have had regard to the House of Lords case of In Re H (1996) 1 All ER 1, which makes it clear that in civil proceedings the standard of proof is always the balance of probabilities. However, the more serious an issue or allegation, the more cogent the evidence that is required prior to making an adverse finding. The evidence is overwhelming, and I am satisfied that my findings of fact meet the legal standard.

42. Having watched and listened to Victoria Paul give evidence, I make the following findings of fact:

- It is of no coincidence that the application for a licence by Victoria Paul coincided with Anthony Parsons receiving a call-in letter calling him to the public inquiry which led to his licence being revoked and the order of his disqualification;
- The operator has not been operating from the registered operating centre and has operated from one that has not been authorised;
- The new operating centre application was made to make it easier for Anthony Parsons;
- disqualified operator Anthony Parsons employs the drivers;
- the business is primarily run on a cash only basis;
- the rationale for operating on a cash basis is to hide the true position from those who might otherwise have questions or concerns. This includes Victoria Paul's husband, HMRC and the Traffic Commissioner;
- Fuel payments do not match up with vehicle utilisation;
- The controlling mind in the business is Anthony Parsons;
- Anthony Parsons made arrangements for maintenance;
- Victoria Paul has had little or no real input into the business and her application for an operator's licence was merely an attempt to circumvent the anticipated order of personal disqualification involving her father.
- Despite the name on the licence being Victoria Paul, the licence is operated by Anthony Parsons. This is a case where Victoria Paul has been a front for her father.

43. A Stay decision in the case of Highland Car Crushers Ltd made the following comments:

“Other operators, with knowledge of the case, might be tempted to look at the circumstances and say to themselves this operator appears to be getting away with it so why should we bother to incur the expenditure of time, trouble and money to run a compliant operation? It only needs one or two operators to adopt this approach to lead to a greater risk that the operator licensing system, which contributes to road safety, will be fatally undermined.”

44. In the case of 2007/459 KDL European Ltd the court said:
“We are satisfied of the need “to make an example of the operator so as to send a warning to the industry as a whole”. This is consistent with the approach by the five-judge Court of Session in the Thomas Muir case (see paragraph 2(xiii) above) where deterrence is expressly mentioned (“in particular for the purpose of deterring the operator or other persons from failing to carry out their responsibilities under the legislation”). This is not by way of punishment per se but, as Lord Cullen said, is “in order to assist in the achievement of the purpose of the legislation”. We answer the question posed in 2002/17 Bryan Haulage (No.2) “is the conduct such that the operator ought to be put out of business” in the affirmative. And we judge this at the date not only of the public inquiry but also of the appeal. This is a bad case and we hope that the message sent out will be clear to all.”

45. Judge Brodrick, in the case of 2006/277 Fenlon said:
“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. If trust between operators breaks down and some operators believe that others are obtaining an unfair commercial advantage by ignoring laws, rules or regulations then standards will inevitably slip and the public will suffer.”

46. When I ask myself the Priority Freight question, I do not trust this operator, in any event the fundamental issue in this case is that Victoria Paul is not the person who is in control, that is her father who has been disqualified from holding or applying for an operator’s licence. I answer Priority Freight question in the negative. I go on to answer the Bryan Haulage question in the affirmative, it is very much in the public interest that this business closes. My decision to revoke the licence is an easy one as a result of my findings. I had attempted to ascertain positive features, but I have struggled to do so. Paperwork including the written report of Paul Davies shows that some maintenance has taken place. The negative features detailed in my findings are significant in their scope and easily outweigh the positive ones.

47. When considering section 28 of the 1995 Act I reflect that the actions of Victoria Paul are such an order is proportionate, I also take into account the helpful guidance in the Senior Traffic Commissioner’s statutory guidance. As a result of a calculated attempt to hide the true position from me, and the clear culture whereby the business was run on a cash only basis I need to impose an order of personal disqualification. I note that the driving force in the business is Anthony Parsons, not Victoria Paul. Accordingly the length of the order of disqualification is not as long as would be the case if I thought that Victoria Paul was the driving force in the illegal fronting exercise.

Decisions

48. I make decisions as set out in paragraphs 1-6, above.

A handwritten signature in black ink, appearing to read 'Nick Jones', with a horizontal line underneath the name.

Nick Jones
Acting Traffic Commissioner for Wales
Comisiynydd Trafnidiaeth

21 October 2019