



**DECISIONS OF THE TRAFFIC COMMISSIONER
FOR WALES**

**Davies & Meredith Ltd – OG0046790
&**

Transport Manager – Gavin Richard Eley

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

Decisions made in respect of Davies & Meredith Ltd OG0046790

1. Adverse findings are made under sections 26(1)(a); 26(1)(b); 26 (1) (c) (iii); 26 (1) (ca); 26 (1) (e); 26(1)(f); and, 26 (1) (h) of the 1995 Act.
2. The operator continues to satisfy the requirement to have sufficient financial standing, sections 13 A (2) of the 1995 Act.
3. At the time of the hearing the operator no longer satisfied the requirement to be professionally competent under sections 27 (1) (a) and 13 A (2) of the 1995 Act. I have agreed a new transport manager to address professional competence.
4. The operator continues to satisfy the requirement to be of good repute, albeit it is tarnished, sections 13 A (2) of the 1995 Act.
5. The operator’s licence is curtailed from 50 vehicles and 50 trailers to 35 vehicles and 35 trailers from 0001 hours on 1 November 2019.
6. I do not make an order under section 26(6) of the Act for reasons set out below.

Decisions made in respect of transport manager Gavin Richard Eley

7. Gavin Richard Eley no longer has the necessary repute and professional competence. He is disqualified from holding or applying for any such position within the EU for a period of 3 months.

Background

8. This operator's licence was originally granted in 1993 but the directors sold their shares to Noel Nolan who is the current sole director. I was fully notified of the changes in ownership, see below, it is relevant only to point out that Noel Nolan's involvement and that of the Nolan family is more recent. At the time of the public inquiry before me it was a standard international licence with authority for 50 vehicles and 50 trailers. There are two registered operating centres, one in Pontypridd, the other in Pembroke Dock which became the focus of DVSA concerns which led to public inquiry.

9. Noel Nolan has a number of siblings who have controlling interests in other businesses in UK and Eire, they are separate legal entities. Over a decade ago there were hearings involving Nolan Transport which was then based in Eire and there were very real concerns over issues relating to compliance. At one stage an application for an operator's licence in Wales was made with a formal objection from the Road Haulage Association as a result of the apparent lack of compliance. I refused that original application, later there was a well publicised hearing following vehicles being impounded with my decisions appealed to the Upper Tribunal. At that time I referred to the way in which the various members of the Nolan family did not appear to communicate and function as effectively and efficiently as could be the case. I went on to comment to effect that Noel Nolan appeared to have a good grasp of the important strategic issues (I didn't use these words but they reflect the gist), I hinted that perhaps he should be put in control. Thereafter he appeared to take on a leadership role.

10. Following the earlier relatively unhappy history in operator licensing within GB, the Nolan family sought to be compliant and invested heavily in assets, including purchasing controlling interests in three limited companies that were hauliers in Wales. One was the entity before me at the public inquiry, Davies & Meredith Ltd (regularly referred to in this decision as "Davies & Meredith"). Another operator which was mentioned frequently at the hearing was John Raymond Transport Ltd (regularly referred to in this decision as "John Raymond Transport"). John Raymond Transport was, and still is, regarded by the DVSA and me as a good compliant operator.

11. A public inquiry for Davies & Meredith was held in 2013, mainly due to Noel Nolan's previous history involving another operator in Wales which had been called to a hearing in 2010. The outcome of the public inquiry in 2013 was that no adverse findings were made but undertakings were requested and agreed.

12. Following an unsatisfactory maintenance investigation in 2015 and an application to substantially increase vehicle authorisation, a preliminary hearing was held, Noel Nolan was unable to attend but his brother Richard Nolan attended, he was director of other entities involving the Nolan family. Also in attendance was John Meredith who at that time was director and transport manager. The operator was represented by Mr Backhouse and there were various DVSA examiners present too. The outcomes of the preliminary hearing was recorded as follows:

Outcomes:

- *Preliminary hearing convened as public inquiry called for today, but director Noel Nolan had a pre booked holiday. Several potential legal issues arose from the file so I asked that they be addressed in a preliminary hearing.*

- *The call in letter refers to Irish vehicles, the actual position is that*
 - *All tractor units are either GB registered taxed and MOT'd – or Northern Ireland taxed, registered and MOT'd.*
 - *It was agreed that any Northern Ireland vehicles would either have a disc in the windscreen showing the MOT details – or a copy would be kept in the cab for any enforcement officer to view*
 - *Trailers are all from the Republic of Ireland and come from the parent company, not Davies & Meredith Ltd. There was detailed discussion on both the need to improve driver walk round checks on trailers – and additionally – address the load security issues that have caused concern. Solutions were discussed with DVSA and the operator*
 - *The DVSA are content that matters are adjourned generally so that they can assess whether the new practices promised actually produce the outcomes that are sought. (named DVSA examiner) will review the position in 6 months and in any event my office will need to ensure that this is brought to my attention within 12 months.*
 - *There is an existing interim authority so there is no issue with an adjournment. The current authority is 50 v and 50 t since the interim came into effect.*
- *Eventually there will be a need to confirm the full grant of the increase to 50 v and 50 t – but if there are outstanding DVSA concerns this is likely to be considered at a future PI.*

13. The interim authority was later made permanent.

14. This latest hearing was called following an unsatisfactory DVSA investigation and in particular, concerns regarding nuisance parking of the operator's vehicles. Since the last hearing Noel Nolan had become sole director with the resignation of John Meredith as both director and transport manager. Gavin Richard Eley became the new transport manager.

Public Inquiry

15. In attendance at the public inquiry held on 10 June 2019 in Cardiff were:

- Noel Nolan, director
- Gavin Richard Eley, transport manager and sole employee
- Scott Gregory, maintenance manager, Oaklands Garage
- VE Wayne Williams
- TE Christopher Matthews
- VEM Andrew Rustage
- Lee Webb Head of DVSA Enforcement Delivery Team

Delay

16. The hearing was originally listed for an earlier date but was postponed as a result of the director having a pre-booked holiday. After hearing evidence I indicated that I would produce a written decision after reading a transcript. As a result of comments

that I made relating to the various entities owned by various members of the Nolan family, director Noel Nolan asked for some time to communicate with family members and to then make representations to me as to future arrangements. I readily agreed to this, details of the response are set out below.

Evidence

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

- Written public inquiry brief for Davies & Meredith Ltd;
- Written public inquiry brief for Transport Manager Gavin Richard Eley (“Gavin Eley”);
- Contemporaneous handwritten notes from the hearings;
- A 129 page transcript of the hearing;
- Evidence and representations given to me during the hearing;
- Written representations sent to me after the hearing from director, Noel Nolan;
- 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).

18. Financial evidence was produced in accord with statutory documentation which easily met the requirements for financial standing.

Evidence of VE Wayne Williams (and evidence from others on his report)

19. The public inquiry brief prepared by VE Williams was adopted by him as evidence, it was broadly accepted by Mr Backhouse. I asked a number of questions to confirm its contents. The following facts emerged:

- Davies and Meredith operate articulated tractor units;
- All vehicles are liveried “Nolan”.
- The current sole director for this operator was Noel Nolan
- All vehicles were hired from Truck Resources (UK) Ltd
- Drivers were hired from an agency called Letforce Ltd
- the director of Letforce Ltd and of Truck Resources (UK) Ltd was Joan Nolan
- Gavin Eley was the only individual employed by this operator

20. The initial maintenance investigation was initiated following an S marked prohibition issued during a roadside encounter on 15 January 2017. Issues included, but was not restricted to, loose wheel nuts and wheel nut stud holes elongated with detachment likely. Additionally, the South Wales Police Commercial Vehicle Unit commenced an investigation following a wheel loss incident on 23 May 2017 on the M4 motorway near Swansea. The prohibitions issued related to wheel loss and defective brakes.

21. During the hearing there was discussion on the view of the DVSA to effect that when there was a wheel loss that it would, in virtually all cases, have been avoidable if the driver had conducted a proper walkaround check. Mr Backhouse did not accept that this was the case, the views of Vehicle Enforcement Manager Andrew Rustage were given to me. VE Williams pointed out that elongated wheel nuts was a clear indication of a long-standing issue and should have been detected by a driver undertaking a proper check.

22. An unannounced visit on 24 May 2017 resulted in contact with transport manager, Gavin Eley who stated that all maintenance documentation was kept at Oaklands Garage, Pembroke Dock. A text message was sent by Gavin Eley authorising Scott Gregory to speak on behalf of the company as although he was the transport manager, he (Gavin Eley) was unavailable to attend that day.

23. Scott Gregory was the workshop supervisor at Oaklands Garage, a satellite workshop of Nolan Transport, Oaklands, New Ross, Ireland.

24. The most recent maintenance investigation for this operator was conducted on 7 November 2017 with an unannounced visit to the operating centre at Treforest Industrial Estate, Caerphilly. At the time this was the registered address for the operator. The office area was unmanned, unlocked and engagement with any office staff was not possible. The vehicle and trailer parking area was surrounded by security fencing with automated security gates.

25. Access was attempted by contacting the telephone number specified for the transport manager on the examiner's compliance system, that telephone number was directed to the "Runcorn office".

26. Eventually access to the vehicle compound was permitted when a driver was engaged and DVSA powers of entry were exercised under section 68 of the Road Traffic Act 1988 with warrant cards presented.

27. Contact with the transport manager by telephone was eventually possible and he stated that all maintenance documentation was kept at Oaklands Garage, Pembroke Dock. He again authorised Scott Gregory to speak on behalf of the operator as, despite being the nominated transport manager, he was unavailable with customer visits being undertaken. At the public inquiry I asked about the customer visits and it was confirmed that this related to business customers for Nolans and was not transport manager related.

28. No vehicles operated by Davies and Meredith were evident, however numerous Irish registered Nolan liveried trailers and Nolan liveried vehicles were present. The operating centre was also used by another operator, John Raymond Transport which was authorised for 15 vehicles and 15 trailers at that operating centre.

29. A visit to the specified operating centre at Gate 1, Pembroke Port was conducted but no vehicles were present. The operating centre was located within the port area of Pembroke Dock. A port security gate was present at the entrance with

that being the only access. A portion of land was designated to Davies Meredith for use as an operating centre within the port area.

30. A drivers' restroom was present, but it was apparently unused with packaging and coverings evident on all furnishings. I quizzed VE Williams about this and he confirmed that the door was locked but he saw the coverings on furnishings by peering through the window.

31. The evidence of VE Williams was that port security had commented to him on numerous visits that there was no operating centre there for Davies Meredith and that the area was used as an overspill trailer park for Nolan Transport.

32. No specified vehicles for Davies and Meredith were present at the Pembroke Port area, however numerous Nolan liveried vehicles were present and parked at roadsides and waste ground areas as well as the Oaklands Garage parking area.

33. A visit to Oaklands Garage, Pembroke Dock was undertaken to seize all maintenance records, DVSA examiners spoke to Scott Gregory. During the hearing before me I was told that every call to Gavin Eley was problematic and it took a while to make an appointment with him.

34. A request was made to Scott Gregory to present five specified vehicles for a fleet inspection.

35. Transport Manager Gavin Eley was telephoned on 14 November 2017 with a request that he be interviewed at the registered office in Treforest. An appointment was agreed for 22 November 2017 as the transport manager was busy conducting other duties on behalf Nolan transport. On my querying this at the hearing I was told that this related to transport -related duties and day-to-day overseeing of business including drivers, ensuring that they were planned correctly, and so on.

36. During the interview at Oaklands Garage, Pembroke Dock, Gavin Eley stated that the offices at Treforest were being vacated and nothing was held there. He also told VE Williams that Scott Gregory of Oaklands Garage was responsible for all maintenance activities. During the hearing I pointed out that it was he, Gavin Eley, who was responsible for all maintenance related activities.

37. The operating centre at Stena Line Ports Ltd, Fishguard Harbour, was visited on numerous occasions during the investigation with Davies Meredith vehicles present along with numerous Nolan liveried UK and Irish registered vehicles.

38. Premises at Gate 1, Pembroke Port had been visited on numerous occasions including weekends when drivers were expected to undertake weekly rest. Comment was made that Gate 1, Pembroke Port was not used on all occasions. Vehicles specified to Davies Meredith could be seen parked on waste ground, side roads, car parks, pavements, Oaklands garage and generally uncontrolled parking throughout the Pembroke Dock and port area. A substantial amount of photographic evidence was provided to support this contention.

39. During the course of the investigation specified vehicles had, according to VE Williams, been using unauthorised operating centres to park at weekends, this included:

- Cross Hands Business Park
- Pantyffynon Farm, Llanddarog
- Whitland Train Station, Whitland
- A Poole Operating Centre, Whitland

40. Vehicles parked at the above sites at weekends were occasionally loaded, at other times they were unloaded. On answering questions during the hearing before me, it emerged that the illegal parking took place between June and November 2017 and afterwards, VE Williams was not sure if this ceased. Addressing this point, Mr Backhouse advised me that this was accepted in respect of two of the locations, it had been dealt with albeit not quickly enough.

41. Both in his written report and on answering questions during the hearing, VE Williams claimed that the operator did not use the recorded operating centre at Gate 1, Royal Dockyard, Pembroke Dock SA72 6TD despite it being authorised for 10 vehicles and 10 trailers. Instead drivers chose to use wasteground on side roads within the vicinity of the port area along with the parking area at Oaklands Garage. Other Nolan liveried vehicles were described as “*uncontrollably nuisance parking*” within these areas.

42. At least two emails had been sent and responded to by transport manager Gavin Eley regarding authorised parking, assurances that were made that the parking issues would be addressed by the planning office, did not come about. VE Williams said that the transport manager was simply requesting that the operating centres were used but not enforcing it, this showed that the transport manager had no effective control.

43. Numerous Davies & Meredith vehicles had been encountered by local DVSA examiners in the area, questions were regularly posed to drivers, asking who was the transport manager? Many responses were received such as Simon Pembroke (referring to Simon Brady, who was transport manager of J&J Tracking who had an office at Oaklands Garage), Nolans and New Ross Ireland. On my asking about this I was told that Scott from Pembroke was also occasionally described as a transport manager. In other words, drivers did not know who their transport manager was.

44. On requests for annual test documentation on Northern Ireland registered vehicles, no documents were ever provided by drivers at roadside checks involving VE Williams, they were regularly asked for them and this had been an issue since the onset of the investigation. In each case details were later supplied by email from Scott Gregory of Oaklands Garage. This was still an issue up to 19 March 2019 (the statement of VE Williams was dated 22 March 2019).

45. Addressing maintenance issues, Scott Gregory had advised that routine maintenance for this operator’s vehicles was conducted by Oaklands Garage, with any major work such as engine and transmission work carried out by Nolan Transport in Ireland. Although specified as maintenance contractors, Burnt Tree

Group and Gullivers Truck Hire Ltd did not conduct any maintenance for Davies Meredith.

46. Turning to the issue of inspection records, it transpired that they were all held in a file at Oaklands Garage, Pembroke Dock. Digital records were also held on a company (Nolan's) database which were accessible to transport manager Gavin Eley electronically.

47. A number of what I regard as positive features applied to inspection records were described: they were up-to-date; there were no gaps in frequencies; there was no missing inspection documentation; all documents were completed fully and included roller brake tests; and, 15 months of records were available for all vehicles. The electronic maintenance database used by Davies and Meredith and Oaklands Garage was controlled by Nolan Transport, Ireland.

Evidence of TE Christopher Matthews (and evidence from others on his report)

48. TE Matthews corroborated much of the evidence given by VE Williams. The operator had 106 traffic examiner encounters over the past five years with 12 drivers' hours prohibitions issued on 10 separate occasions. Additionally, there were six encounters relating to vehicle weight, with four prohibitions issued (not all of these during the time since Gavin Eley had been transport manager).

49. On 23 November 2018 TE Matthews met with Gavin Eley at his office which was at the premises of John Raymond Transport in Bridgend, also present was the maintenance contractor Scott Gregory, together with other DVSA examiners.

50. TE Matthews was concerned that the operator did not have enough control over the work allocated to drivers. Work was planned and allocated centrally by the Nolan Transport office in New Ross, Ireland. Schedules were computerised and could be viewed by the transport manager, but there was no direct involvement from Davies & Meredith in the allocation of journeys, duties or loads. On my asking about this at the hearing, Mr Backhouse advised that this was computerised and that transport manager Gavin Eley was part of the system.

51. There was external analysis of analogue charts and downloaded data, this was undertaken by Simon Brady in Pembroke Dock, he worked for the Nolan Transport Group. Trutac software was used to analyse and produce reports, infringements were put to the driver with Simon Brady signing the company declaration in providing refresher training where required. Concern was expressed that there was no evidence that transport manager Gavin Eley signed any of the reports or had any involvement with drivers' hours compliance, monitoring or discipline. Mr Backhouse indicated that this was accepted as factually correct but suggested that it was not the whole picture.

52. Gavin Eley told the examiner that he went through reports once a week with Simon Brady in Pembroke Dock, however this could not be substantiated with any paper trail.

53. Working Time Directive requirements were monitored by Simon Brady, but TE Matthews was concerned that drivers journeys and duties were not being planned with the Working Time Directive in mind as he could not see the link between compliance and scheduling, nor any input from the transport manager.

54. TE Matthews tested Gavin Eley's knowledge of the Working Time Directive and found it to be lacking, he was unable to confirm the reference period used and was unsure of the maximum average working hours permitted, or the maximum working time permitted in any one week.

55. In his response to the shortcomings Gavin Eley told the DVSA that the reference period used was 26 weeks. It was possible to extend the default calendar option of 17 week periods to include 26 week periods however, this had to be agreed by a workforce or collective agreement. I pointed out at the hearing that the operator did not appear to employ any drivers, agency drivers were used.

56. It was also pointed out that drivers who were night workers were limited to 10 hours working unless a relevant agreement was in place. No workplace or collective agreements were produced.

57. TE Matthews was told that Nolan Transport conducted initial training for new recruits in New Ross, Ireland, but there was no paper trail evidence on this.

58. Either Nolan Transport or John Raymond Transport (the latter have their own training facilities) conduct CPC training for drivers employed by the agency used by the operator. Drivers pay for the courses themselves which were sometimes delivered in company time and on other occasions in the driver's own time. There was no record of modules completed to ensure drivers requalified by their expiry date.

59. Turning to training on loading techniques and weight distribution, there was no evidence of a policy or procedure, the examiner was told that this was training given as part of the induction package delivered by Nolan Transport in New Ross, Ireland. There was no evidence of this.

60. It was confirmed that most of the overload prohibitions referred above applied before Gavin Eley took up his transport manager post in 2016.

61. During the interview, Gavin Eley indicated that he thought that driving licences were checked every three months, however looking at the file produced this did not appear to be the case. The file contained photocopies of driving licences but no DVLA printouts.

62. I was told at the hearing that documentary evidence was available from the supplier of the drivers. Additionally, it was conceded that the examiner's comments relating to the checking of licences was correct although this was now undertaken properly.

63. Gavin Eley told examiners that Nolan Transport checked UK driving licences with the DVLA but he did not have sight of that.

64. An example was given of an individual who had been driving with an expired license for a number of months, although Mr Backhouse pointed out that that individual had not been driving without a licence, the issue was that the photo card had expired and the vehicle insurance was not affected.

65. Addressing MOT renewal dates, the transport manager trusted that they were correct and had no direct input. At the hearing I was reminded that he went to Pembroke Dock once a week.

66. Referring to concerns by VE Williams that the operator was not parking vehicles at the operating centres, TE Matthews reported that records confirmed that most of the vehicles were not parking at one of the three operating centres when drivers were taking their weekly rest, full details were given.

67. Substantial written and photographic evidence was produced relating to problems relating to vehicle parking, there was a detailed description of the vehicle encountered on 11 April 2018 which had been driven by a driver who lived in Whitland. The vehicle was fitted with an analogue tachograph and it was apparent that it had been parked in Whitland when not in use and the driver was parking it at or near his home. I was advised at the hearing that that driver had left the company, it was conceded that the transport manager should have controlled this and not relied on the DVSA.

68. The driver who lived in Whitland was not in possession of the MOT certificate which had been issued in Northern Ireland, eventually evidence was emailed to the DVSA by Scott Gregory. On being asked the driver claimed that he had worked for Nolan Transport for about 12 months and stated that the transport manager was Simon Brady. At the hearing it was put that Simon Brady was the face of Davies & Meredith from the point of view of tachograph compliance.

69. TE Matthews questioned whether Gavin Eley had authority to adapt and change policies and procedures within Davies & Meredith. I asked how much he was paid and I was requested that this be treated as confidential, the figure provided will be available to the Upper Tribunal in the event of any appeal. I commented that as a traffic commissioner with extensive knowledge of the salaries that apply in the industry, it was not what I would describe as a high salary, especially for a transport manager responsible for 50 vehicles and 50 trailers (the operator does not own trailers but it still has responsibility for them when they are used). I reflected that the modest salary applied to the only individual who was an employee of Davies & Meredith.

70. Later, Noel Nolan told me that he would be addressing my concerns including appointing additional staff.

Other evidence

71. I have not set out all the evidence but have sought to refer to those parts that I regard as important and relevant. Some of the evidence produced amounted to corroboration of the written public inquiry statements from VE Williams and TE Matthews. An example of this is a statement of VE Stephen Jobber who describes an encounter on 6 May 2019 at DVSA's Doxey check site involving a Davies & Meredith vehicle where a tyre had a serious defect and was devoid of measurable tread in large areas. The examiner wrote "*This defect would have been obvious to the driver during a walk round daily first use inspection*" with an immediate prohibition issued. The communications with the driver were such that he later wrote: "*It appeared to myself that Nolan Transport Ltd was instructing drivers and in control of these vehicles. I had no contact with anyone from Davies & Meredith Ltd.*"

72. During the hearing I asked Gavin Eley about his work, he had told me that he undertook transport manager duties for 40 hours a week and additionally conducted some work for Nolan Transport. On my pursuing this he confirmed that this included sales visits and customer visits to ensure customer satisfaction.

73. I put it to Gavin Eley that he was responsible for 50 vehicles and 50 trailers and was dealing with sales visits rather than just concentrating on the transport side of his job. He confirmed that at that time this was correct. I made it clear that I was unimpressed as the requirement was for continuous and effective management of transport.

74. On my commenting about the 50 vehicles and 50 trailers, Mr Backhouse interjected to remind me that Davies & Meredith only owned 50 vehicles and not any trailers. I responded that there was still responsibility for trailers that were used, this was agreed.

75. Mr Backhouse confirmed that the company had accepted in its report that they were not as disciplined with drivers as they should have been in relation to parking at Pembroke Dock amongst other places, however he questioned whether some of the parking which cause concern to the DVSA was either illegal or improper. One of his comments was that *“there is a difference between parking in places between a driver parking up, leaving the vehicle and just leaving it somewhere and then going off two days and a driver who has come across on the ferry stopping, or waiting for the ferry to go out and stopping at a place that they be more convenient than the operating centre. He can do that, that is not unlawful.”*

76. The transcript shows exchanges between those attending which illustrates the tensions that arose in relation to parking near to the operating centre but not in it. At one stage VE Williams referred to a truck and said *“so are you telling me that the truck is in use when the driver has got clothes hanging from the mirrors?”* Noel Nolan responded *“well, he could be waiting, the ferries are twice a day, they don’t go every hour. He has to wait on the ferry coming back.”* VE Williams then queried whether the drivers were having their weekly break or whether the vehicles were in use, it was agreed that one would not be able to tell in each case unless the transport manager investigated.

77. VE Williams expressed what I would describe as exasperation on the issue of parking and indicated that he had received assurances from transport manager Gavin Eley that were not kept.

78. I was told that what was described as general nuisance parking applied to Davies & Meredith vehicles, there was no issue with vehicles owned by other entities in Wales where Noel Nolan was director, in particular John Raymond Transport did not present any problem for the DVSA.

79. Discussion ensued at the hearing on the legislation relating to operating centres and the word “normally” as the critical feature was where the vehicles were normally parked.

80. Noel Nolan referred to problems within the port of Pembroke and the fact that the local authority wanted the business, but had not provided lorry parking facilities within the port.

81. There is also discussion on whether the problems encountered by the DVSA had continued, VE Williams was clear that there was a continuous problem throughout 2018 and until March of this year.

82. Mr Backhouse reminded me of the difference between illegal parking and that where it was not illegal but was a nuisance. I reminded Mr Backhouse that one of my functions related to attempting to enhance the image of the industry and that as regulator it was a concern when operators did not ensure that their vehicles and trailers were not parked illegally or inconsiderately.

Representations by and on behalf of the operator and transport manager at the public inquiry

83. Aside from providing oral evidence and answering questions, Gavin Eley provided a letter that he asked me to consider. He admitted that whilst carrying out his duties, he was not as visible as he should have been, although he claimed to have made considerable effort in ensuring records were kept to a high standard. Details of the systems that he said were in place were set out.

84. Gavin Eley referred to the suggestions from the DVSA relating to his lack of knowledge of the Working Time Directive requirements, claiming that on the day in question he felt under pressure and had what he described as a “mind blank”. Having accepted that this may not look good he had made a decision to attend a refresher course.

85. It was suggested by Gavin Eley that he always carried out his duties to the best of his ability but reflected that perhaps they could have been executed to a higher standard.

86. Mr Backhouse, on behalf of the operator conceded that the operator agreed that MOT certificates for the Northern Ireland vehicles would be carried in the cab at all times, the position was that drivers always had it but did not produce it, probably panicking or not realising what it was that was being sought, and when the company was later asked it was produced to the DVSA electronically.

87. Describing the various entities conducting business on behalf of the Nolan family, Mr Backhouse told me that there was a plan for a single, and better, structure. However it was not something that could be implemented in six months, it would take up to 3 years. I was told that the family were very much cognisant of the benefits that would bring to them if they had a simpler structure.

88. Three separate entities holding operator’s licences in Wales had been purchased by the Nolan family who had been open and transparent with me on this. Aside from purchasing the interests in Meredith & Davies Ltd it had also purchased J & J Transport, and John Raymond Transport.

89. I was told by Mr Backhouse that the family had a concept amongst the group of companies which they called “Shared Resources” and amongst the shared resources was a supply of drivers to individual operating entities and also a supply of maintenance facilities to the individual operating entities. Later he described yet another shared resource providing Working Time Directive and drivers’ hours analysis.

90. Although the application had not at the time of the public inquiry been submitted, the principal operating centre was to be moved to Bridgend which would have complete facilities, the transport manager was based there and it would be easier for him. Noel Nolan interjected at this point of the representations to confirm that the legalities relating to a new lease were progressing well.

91. Written representations on behalf of the operator included an audit from a former VOSA examiner who had suggested that systems were in place and working efficiently.

92. Mr Backhouse suggested that the transport manager should not lose his reputation, he was relatively recently qualified and was putting matters right.

Written evidence and representations from director, Noel Nolan, after the public inquiry.

93. Correspondence from Noel Nolan confirmed that following observations made by me at the public inquiry, plans had been taken in conjunction with Nolan senior management. It was described as a major restructuring operation which needed careful planning and assistance from accountants, tax and legal advisors. I was told that it was anticipated that a plan would be presented by the end of November 2019 with a view to having it fully implemented within two years at the latest. In principle, subject to various advice received it was envisaged that the consolidated structure would include the following:

1. A larger operating company;
2. The operating company employing management which would operate administratively from the new depot in Bridgend which had just been completed;
3. It was envisaged that the company would hold the licences for the Welsh operation and would employ its senior management and operations management direct;
4. In terms of drivers, it was envisaged that a portion of drivers would be employed by the company along with the continued use of a proportion of agency drivers to facilitate peak business periods and business requirements; and,
5. A larger management team to operate the larger fleet.

94. Reference was made for the need for further input and advice along with consideration of the ongoing uncertainty surrounding Brexit and its implications for the haulage industry.

95. In view of my comments, the following changes within Davies & Meredith would be made within three to six months:

1. The employment of a second transport manager;
2. Employment of key management staff to be responsible for operations;
3. Noel Nolan to continue to act as director; and,
4. Davies & Meredith to seek to transfer its licence to the Bridgend premises where John Raymond Transport Ltd also have their own office facilities. Reference was made to Davies & Meredith clearly benefiting from cross learning from John Raymond Transport Ltd.

96. Turning to the effects of regulatory action and references to my commenting on potential curtailment, it was put that all 50 vehicles were required to carry out normal work. The operator's peak period was from the end of August until Christmas, significant impact would be had if there was a reduction. I was asked to accept that the company was committed to significant change in line with comments and concerns expressed by me during the public inquiry. Additionally, there was reference to engagement with named senior DVSA officials, seeking their guidance to create better environments and working relationships for all.

Application to add another transport manager brought to my attention on 19 September 2019.

97. Part way through producing this written decision I received a submission from the OTC central licensing office as an application had been made by a James Alexander Bennett ("James Bennett") to be added as a transport manager. I was not clear whether this was as an additional (second) transport manager or as a replacement for Gavin Eley. I am content to approve this application whether or not James Bennett is sole transport manager or a second transport manager.

Material considerations and findings of fact.

98. The evidence from the DVSA witnesses was that Northern Ireland registered vehicles did not always have copies of the MOT certificates as promised to me at an earlier hearing. There was no evidence of a copy of an MOT certificate ever having been produced at the roadside. Evidence and representations from the operator and transport manager suggested that drivers might have been confused but always did have the MOT certificates. I do not accept the evidence from the operator and transport manager on this point and make a finding that the promise made to me about Northern Ireland registered vehicles when I agreed to an increase in vehicle authorisation was not kept.

99. I accept that there was nothing sinister in the failure to keep the promise to me, it reflects the lack of anyone having proper control of transport within Davies & Meredith. Transport Manager Gavin Eley did not exercise continuous an effective management of transport, although I accept that he did play a role, indeed he was the only employee of the business.

100. There is nothing intrinsically wrong with third parties assisting a transport manager, indeed this is common practice. However in this specific case it is clear that the separate legal entities were not coordinated so that there was proper control. I reflect that one of the other Welsh operator licences owned by Noel Nolan, namely John Raymond Transport has not presented any problem to the DVSA despite it

working from similar sites. In fairness to John Raymond Transport, it is not been called to this public inquiry (although it has a common director) there is no problem with this as I do not criticise John Raymond Transport in any way. During the hearing there was reference to the good management and training structure within John Raymond Transport, this was in stark contrast to Davies & Meredith.

101. In this case the one employee was the nominated transport manager paid on a relatively modest salary. His salary is such that I consider it as highly unlikely that he would have been in a position to change arrangements relating to those many parts of the business which were outsourced to other members of the Nolan family.

102. The fact that Gavin Eley did not have the continuous and effective management of transport required was illustrated not merely by the failings identified by the DVSA investigation, his conducting a role involving sales and customer service corroborates my view that he should lose his repute as a transport manager. Had transport management been properly carried out then I would not have had a problem with Gavin Eley undertaking other duties. Indeed, I reflect that in some smaller businesses where there is a relatively modest number of vehicles a transport manager will often be responsible for more than mere transport management. The number of vehicles and trailers authorised in this case is such that there was no justification for him undertaking customer service and sales work. In any event he was not carrying out his transport manager duties.

103. I can accept the representations from Mr Backhouse to effect that Gavin Eley had suffered because he is relatively recently qualified and is new to the business, he pointed out that the transport manager was seeking to improve his knowledge and had already implemented some changes required. This is relevant to the extent that although I feel that I would be failing in my duty if I did not make a finding that he loses his repute as a transport manager, the order of three months disqualification that follows is relatively modest. It does not prevent Gavin Eley working for the operator in another capacity during the period of formal disqualification.

104. It is clear that for a substantial period of time there was no real professional competence within Davies & Meredith, however, as I produce this decision I learn that a new transport manager has been appointed. I do not have a problem with this. Similarly, if he is still an employee, I do not have an issue with Gavin Eley seeking reinstatement as a second transport manager for Davies & Meredith when his disqualification expires.

105. Gavin Eley gave reassurances to DVSA examiners following their concerns relating to nuisance (and in some cases illegal) parking, but he did not follow it through.

106. For the avoidance of doubt wherever there is a conflict between the evidence of DVSA examiners and that of others employed by or working on behalf of Davies & Meredith, I prefer the evidence of the DVSA witnesses.

107. This hearing involved much discussion on the law relating to operating centres. Mr Backhouse referred to: *C Cryer and Son Ltd 1985*; *Abbeycheer Ltd 144/2002* and *Funstons Ltd 2008/268* the gist of his comment is a quotation: “*vehicles can be parked in locations on a regular basis and that does not make it an operating centre.*”

108. The Upper Tribunal Digest refers to 2002/144 Abbeycheer and comments that the TC in that case should have asked himself: “*Where in his area was the vehicle normally kept*”?

109. As a TC I have to have regard to statutory guidance, helpfully there is clarity in statutory document number 4 at paragraph 41 which deals with the phrase “normally kept”.

A traffic commissioner’s jurisdiction in respect of an operating centre is limited to vehicles authorised by the operator’s licence which are kept there and does not extend to visiting vehicles. The issue of where a vehicle is normally kept when not in use is a question of fact and degree in each case and so it will therefore fall to the traffic commissioner to make the necessary findings.²⁵ Consequently this is a difficult area and there is little guidance which can be issued in this regard. The Transport Tribunal has found against operators where in one instance a fifth of an operator’s vehicles were parked away from the operating centre on most weekends²⁶ or outside the operator’s home for a few weeks²⁷ and where an operator has previously been warned. Whilst considering the drafting of conditions the Upper Tribunal has in other cases relied on the dictionary definitions, for instance ‘occasionally’ where an event occurs ‘infrequently’ and/or ‘irregularly’.²⁸

110. The footnotes also help:

25 2000/014 Reids Transport. In Smit Reizen v Minister van Verkeer en Waterstaat (C-124/09) The European Court of Justice referred to Skills Motor Coaches Ltd v Denman [2001] All ER (EC) 289 in defining the ‘operating centre’ for the purposes of drivers’ rest periods as the place to which a driver is usually attached, namely the transport undertaking facilities from which he usually carried out his service and to which he returned 26 2003/147 W C Hockin 27 2006/277 M J Fenlon 28 2010/297 W P Commercials

111. More recently the Upper Tribunal has assisted in *The Skiers Lodge Ltd 2019/024*. In that case Mr Backhouse represented the appellant before the Upper Tribunal and made not dissimilar arguments in relation to the definition of “normally kept” and operating centres. Admittedly the Skiers Lodge Ltd case involved a PSV operator’s licence and not an HGV licence, however the issue that was considered related to the definition of an operating centre in section 82 of the Public Passenger Vehicles Act 1981 which provides:

“operating centre” in relation to a vehicle, means the base or centre at which the vehicle is normally kept;” the court went on to indicate (at paragraph 65) that “*We are satisfied that the TC’s approach to the issue of whether (named) was an operating centre is not open to criticism.*”

112. I remind myself that a fundamental difference between an operating centre for PSV vehicles and HGV vehicles relates to environmental impacts on the locality. Indeed, it is occasionally the case that TCs receive complaints about an estate with

multiple operators, both PSV and HGV. There are powers to take action in relation to the environmental impact of HGV parking which are not available to PSVs.

113. I also reflect that in my time as a traffic commissioner the issue of illegal and inconsiderate parking by HGVs is one of the features that prominently feature.

114. On reading the transcript of evidence I note I made reference to my history adjudicating in cases involving the Nolan family. In fairness to Noel Nolan, I have regularly described him in complimentary terms and I accept that it must be difficult seeking to persuade family to bring about structural change. I also accept that Noel Nolan has played a significant part in transforming the wider family business from one where it was regarded as a very poor operator, to being one which has been fundamentally changed for the better.

115. Every hearing involves my conducting a balancing exercise and despite the concerns reflected in the case, there are a number of very positive features. Whilst the problems stem from the lack of an effective transport manager and a lack of control, the outsourced businesses owned by different members of the Nolan family have ensured good levels of compliance in some aspects of transport management. Noel Nolan pointed out the substantial financial investments that he and his family had made, I accept that he seeks to be highly respected compliant operator.

116. It is unfortunate that Noel Nolan did not consider using an external quality assurance to assist him in finding out how well Davies & Meredith was working. Whilst his family might provide aspects of good service, a good independent professional audit should have revealed the obvious weaknesses identified and confirmed at the hearing before me. I give credit to Noel Nolan for saying that he was going to speak to senior DVSA officials after the hearing, it would have helped if he had done the same some time ago and sought feedback on his businesses.

117. My role as Traffic Commissioner for Wales requires me to address the two main themes of road safety and fair competition. The lack of staff working for the operator (I'm not referring to 3rd parties for this purpose) has enabled the operator to make good profits, financial standing was easily met and in financial terms the business is successful. I query whether a better structure, with more than a mere single employee would have resulted in the same level of profit. I am conscious that other operators do things properly. In fairness to Noel Nolan he is director of other operators in Wales that do things properly, but perhaps this merely illustrates the lack of effective control that he has in the family structure where there is no formal legal connection.

118. It is not for me to micromanage any business; however I comment that changes in the family businesses suggested by Noel Nolan should be expedited, they are much-needed.

119. Reflecting on the Priority Freight question, I have no hesitation in confirming that matters can be put right and might be put right relatively soon. However, failings identified were both serious and avoidable.

120. I consider that the proportion regulatory action in this case, having reflected on statutory documentation, is to make an order of curtailment of authorisation. Whilst I have no hesitation in reflecting that a curtailment of 15 vehicles and 15 trailers is

proportionate, I have asked myself whether I should make an order under section 26 (6) of the Goods Vehicles (Licensing of Operators) Act 1995. I have not done so as I have taken account of the positive features in this case including the that that I accept that Noel Nolan genuinely seeks to be a good compliant operator who is an exemplar to others. My not making an order under section 26(6) allows other entities owned or controlled by the Nolan family to take up the work. I accept that my curtailment will result in some financial hardship for this operator, however I believe that this is proportionate.

121. 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.”

Decisions

122. I make decisions as set out in paragraphs 1-7, above.

Other

123. This case has involved several references to John Raymond Transport Ltd, a copy of my decision should be copied to that operator as a courtesy.



Nick Jones
Traffic Commissioner for Wales
Comisiynydd Trafnidiaeth

29 September 2019