



SOUTH EASTERN AND METROPOLITAN TRAFFIC AREA

DECISION OF THE DEPUTY TRAFFIC COMMISSIONER

**PUBLIC INQUIRY HEARD AT IVY HOUSE, IVY TERRACE, EASTBOURNE ON 19
SEPTEMBER 2019**

OK1145202 SIMON MALLIA

Decision

Breach of Section 26(1 (a) (c) (ca) (f)) and (h) of the Goods Vehicles (Licensing of Operators) Act 1995 found.

Loss of fitness and absence of financial standing found.

Licence revoked with immediate effect.

Simon Mallia is disqualified for a period of three years with immediate effect from holding or obtaining an operator's licence and direction made that if he is a director or holds a controlling interest in a company during that period any licence held by that company shall be subject to revocation, suspension or curtailment.

Background

1. The operator Simon Mallia is the holder of a restricted operator's licence authorising two vehicles granted on the 24 June 2016. There has been no previous regulatory history but it is noted that Mr Mallia submitted an application to surrender the licence in August 2017 on the basis that he had not used it in the previous year. This application was withdrawn in March 2018.
2. On the 19 November 2018 a vehicle YK64ZNO was stopped and a prohibition issued in relation to loose wheel nuts – the prohibition was marked to show a significant failure of roadworthiness compliance. The driver at the time said that the vehicle was “potentially being operated by Danny Peale.
3. Subsequent enquiries by Vehicle Examiner Simpson revealed that Mr Mallia appeared not to be operating from the authorised operating centre and despite an initial contact with a person purporting to be Mr Mallia no further contact was made and eventually the phone number given to contact him on was unavailable.

4. Investigation in relation to vehicles authorised under the licence held by Mr Mallia showed that they had been owned and insured by Danny Peale who is the sole director of Kent Haulage Limited.

The Public Inquiry

5. Call-up notices were sent to the last known contact addresses for Mr Mallia and not returned. However he did not attend the inquiry and I decided that the case against him should proceed in his absence. The case was heard concurrently with the inquiry concerning Kent Haulage Limited and others.
6. In the Kent Haulage inquiry Danny Peal said that the use of vehicles by Simon Mallia had been by way of a hire agreement. Mr Mallia was supposed to pay him £500 per week for the hire and he had been paid the sum due in cash “on a couple of occasions” but payments had stopped after that date. He had tried to trace Mr Mallia in advance of the inquiry but had not been able to do so. He accepted that during the period when vehicles were authorised under Mr Mallia’s licence they were owned and insured by Kent Haulage Limited. Mr Mallia arranged the maintenance of the vehicles as part of the hire agreement. The driver of the vehicle on the 19 November 2018 had been one of Mr Mallia’s drivers and not employed by him, Mr Peale.

Findings and Decision

7. In my decision concerning Kent Haulage Limited I found on the balance of probabilities that I was satisfied that Mr Peale had been unlawfully operating vehicles through Mr Mallia’s licence and I did not accept the explanation put forward by Mr Peale for what happened. The vehicle examiner could find no trace of Mr Mallia at his registered operating centre and subsequent efforts to meet with him had proved unsuccessful. A driver who was stopped when driving a vehicle authorised under Mr Mallia’s licence on the 19 November 2018 said that the vehicle was potentially being operated by Mr Peale and no evidence was produced to support Mr Peale’s claim that a bona fide hire agreement was in place. Even if it had been at the start of the relevant period, I did not accept that Mr Peale continued to supply vehicles and insure them if only two hire payments were made.
8. Taking all the above factors into account I find that it is more likely than not that Mr Mallia was a party to and complicit in the unlawful operation of vehicles by Mr Peale and Kent Haulage Limited. I believe that what is likely is that Mr Mallia was genuine in his intention to surrender his licence but was persuaded to withdraw that application to allow Mr Peale to use the authorisation for two vehicles.
9. As a consequence of the above I find that there have been breaches of Section 26(1) (a) (c) (ca) (f) and (h) of the Goods Vehicles (Licensing of Operators) Act 1995. I find that fitness to hold a licence has been lost and, proof of financial standing has been not shown. In deciding what action to take in relation to the breaches I need to balance the negative factors with the positive. In this case there are no positive factors to take into account and with reference to Statutory

Document 10 issued by the Senior Traffic Commissioner I find that this case falls into the category of Serious to Severe conduct.

10. Having made those findings I have to decide whether the operator is fit to hold a licence and in this regard I have asked myself the question as set out in the case of Priority Freight Limited & Paul Williams i.e. how likely is it that this operator will operate in compliance with the operator's licensing regime? In other words - can the operator be trusted going forward? My answer to this question is no. Fitness to hold a licence has been lost and it follows that trust has been lost as a consequence. It is also my view that the operator deserves to be put out of business.
11. My order is therefore to revoke the licence held by Simon Mallia under Section 26 of the Goods Vehicles (Licensing of Operators) Act 1995. The revocation will take place with immediate effect. The grounds for the revocation are as stated.
12. In addition to the revocation I have decided that this is a case where a disqualification in relation to Mr Mallia is appropriate and proportionate. It is important that Mr Mallia and other operators realise that the sort of activity that he practised will not be tolerated and will result in serious regulatory action being taken. I have limited the period to three years because this is the operator's first public inquiry and I believe that Mr Mallia may not have been the instigator in the arrangement. My formal order is therefore to disqualify Simon Mallia from holding or obtaining an operator's licence for a period of three years with immediate effect. I also order that if he is a director of, or holds a controlling interest in any company that holds an operator's licence during that period the licence will be subject to revocation, suspension or curtailment.



John Baker
Deputy Traffic Commissioner

30 September 2019