



## **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**

**OK1142518 KENT HAULAGE LIMITED**

#### **Decision**

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

Loss of repute, absence of financial standing and professional competence found under Section 27 of the Goods Vehicles (Licensing of Operators) Act, 1995 found.

Licence revoked with effect from 18 October 2019.

Danny Peale is disqualified for a period of three years with effect from 18 October 2019 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.

Repute of transport manager Glenn Cooper retained but tarnished.

#### **Background**

1. The operator Kent Haulage Limited is the holder of a standard national operator's licence authorising three vehicles granted on the 26 January 2016. The sole director of the company is Danny Peal and the transport manager is Glenn Colin Cooper.
2. In March 2019 Vehicle Examiner Barker visited the operator and conducted a maintenance investigation which was marked as unsatisfactory. A number of prohibitions had been issued in relation to the authorised vehicles, the inspection sheets were deficient in a number of areas, the drivers' walk round

check system was deficient and roller road brake tests were not being carried out at the frequency expected.

3. Enquiries by Mr Barker also showed that the operator had switched a number of vehicles between his licence and licences of other operators namely Simon Mallia and BWC Haulage Limited. It was also shown that the vehicles had been owned and insured by Kent Haulage Limited whilst the registered keepers of the vehicles were the other operators. The current registered keeper of two of the vehicles in question was Robert Fisher who was the sole director of a company Mother's Haulage Limited who had made (and subsequently withdrawn) an application for an operator's licence.
4. When vehicle YK64ZNO was stopped on the 19 November 2018 the driver said he was working for Danny Peal (the director of Kent Haulage Limited) even though the vehicle was authorised under the licence held by Simon Mallia. At that time 10 of the wheel nuts were loose on one wheel and a prohibition indicating a significant failure of roadworthiness compliance was issued.
5. In light of the unsatisfactory maintenance inspection and the questions raised by the swapping of vehicles between operator's licences the operator was called to public inquiry together with operator Simon Mallia, BWC Haulage Limited and another operator Primagrange Limited who I later found had no direct links to the case concerning Kent Haulage Limited.

### **The Public Inquiry**

6. Director Danny Peal and transport manager Glenn Cooper attended the inquiry on the 22 January 2019 and were not represented. Mr Peal had sent a letter on the 2 July offering the surrender of the licence but I decided that I needed to hear the case before deciding to accept this and he was advised accordingly. Mr Cooper had removed himself as transport manager in the interim believing that the licence was to be surrendered.
7. Vehicle Examiner Barker confirmed the content of his report, explained his original concerns in relation to the maintenance issues and his suspicions over the frequent movement of vehicles between licence authorisations, He had reached no conclusions in relation to those suspicions but believed answers were required.
8. Danny Peal outlined the nature of his business and his background. He said that he had applied for a variation to increase authorisation to six vehicles but this had been held pending the outcome of the inquiry and he no longer wished to pursue the application in any event. He 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.

9. In relation to BWC Haulage Limited he said that the director Ben Clifford was an old friend of his who had "done favours" for him in the past so he had loaned and driven the vehicle G15 MUK without any charge, during the period in 2018 when it was authorised on the licence held by BWC Haulage Limited. Mr Clifford had made arrangements for the maintenance of the vehicle during that period. I was shown copies of preventative maintenance inspection sheets showing BWC Haulage as the company whose vehicle was being maintained.
10. He accepted that the vehicles that had been nominated on the application by Mother's Haulage Limited were still owned by Kent Haulage but it had been the intention to sell or hire the vehicles to Robert Fisher who was one of the drivers employed by him. Mr Fisher had now decided not to proceed with the application.
11. In relation to the maintenance failings there had been regular maintenance inspections carried out but the documentation to show this had been in his car which was stolen and subsequently burnt out. He did not tell the transport manager about the prohibitions which had been issued because the problems were rectified at the roadside and he thought this resolved matters. He accepted that mistakes had been made and had enrolled for a CPC course which he would attend if he was permitted to retain a licence.
12. Glenn Cooper told me that he had been the transport manager on the licence since it was granted and had maintained regular contact with Mr Peal. Everything he had seen was in the name of Kent Haulage Limited and he was not aware of the vehicles being transferred to other licences or prohibitions being issued. Mr Peale completed the downloading of tachograph records and he (Mr Cooper) saw the infringement reports which were generally "OK".

## **Findings and Decision**

13. In this decision I need first to consider the evidence presented in relation to the movement of vehicles between operators and in particular between Kent Haulage Limited and Simon Mallia. I made my decision in relation to BWC Haulage Limited on the day of the inquiry and found that whilst I remained suspicious as to what had taken place between Mr Peale and Mr Collyer there was insufficient evidence for me to find on the balance of probabilities that there had been an illegal use of the authorised at that particular time.
14. The evidence before me concerning Kent Haulage and Simon Mallia is however more compelling. Whilst Mr Mallia did not attend the inquiry a statement of a vehicle examiner who had attempted to undertake an investigation in relation to his licence was submitted and had been served on Mr Peale. This showed that the 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 Danny 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 do not accept that Mr Peale continued to supply vehicles and insure them if only two hire payments were made. The fact that one of Mr Peale’s own drivers Robert Fisher nominated two of Mr Peale’s vehicles on the licence application for Mother’s Haulage Limited is an additional factor I can weigh in the balance.

- 15.** Taking all the above factors into account I do find that it is more likely than not that Mr Peale and therefore Kent Haulage Limited were acting illegally by arranging to nominate vehicles on the licence held by Simon Mallia and continuing to operate those vehicles. I do not have to find what the motive for this was but believe it was because Mr Peale had more vehicles than the number authorised and decided to use additional vehicles in the way described. In addition to these findings the failings in the maintenance system are accepted and form part of the balancing exercise I need to conduct when deciding what action to take.
- 16.** As a consequence of the above I find that there have been breaches of Section 26(1) (c) (ca) and (f) of the Goods Vehicles (Licensing of Operators) Act 1995. I also find that reputation has been lost, proof of financial standing was not shown and following the resignation of Mr Cooper professional competence is lacking at present under Section 28 of the Act. In deciding what action to take in relation to the breaches I need to balance the negative factors with the positive. Positive factors in this case are the good MOT pass rate and the fact that a maintenance regime for the vehicles appeared to have been present albeit with deficiencies. 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 taking into account how illegal use of vehicles is viewed and the fact that Mr Peale continued to attempt to cover up what had been taking place by a series of implausible explanations.
- 17.** 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. Reputation had been lost and it follows that trust has been lost as a consequence. It is also in my view that the operator deserves to be put out of business.
- 18.** My order is therefore to revoke the licence held by Kent Haulage Limited under Section 27 of the Goods Vehicles (Licensing of Operators) Act 1995. The revocation will take place with effect from the 18 October 2019 to allow time for the business to be wound down. The grounds for the revocation are as stated.
- 19.** In addition to the revocation I have decided that this is a case where a disqualification in relation to Mr Peale is appropriate and proportionate. It is important that Mr Peale 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 from his behaviour at the inquiry that Mr Peale has learnt a salutary lesson from the process. During the period of disqualification Mr Peale should think carefully what he will need to do to demonstrate that he has changed if he applies for a licence in his own name or as a director of company in the future. He was adamant at the inquiry that he intended to increase his knowledge of operator licensing and this would be a good first step towards the change that is required. Mr Peale should also be aware that if he attempts to circumvent the legislation by arranging for somebody else to operate a licence as a front for him doing so it is unlikely that he will be able to obtain a licence at all in the future. My formal order is therefore to disqualify Danny Peale from holding or obtaining an operator's licence for a period of three years with effect from the 18 October 2019. 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.

20. As regards the former transport Glenn Cooper I do not find, nor is there evidence to show, that he was party to or aware of the illegal activity outlined above. I do find that he was negligent in relation to his oversight of the maintenance arrangements and if he had been more diligent, he may have discovered for himself what was going on. Taking this into account and the record of the other operators for which he is transport manager I find that his reputation is tarnished but retained.



**John Baker**  
**Deputy Traffic Commissioner**

**30 September 2019**