

DECISION OF THE TRAFFIC COMMISSIONER

Bridmin Ltd OD1024952

Wales Environmental Ltd OG0091295

Expanded written version of an oral decision given at a public inquiry in Birmingham on 5 November 2019

Decision: Bridmin Ltd

1. The standard national licence held by Bridmin Ltd is suspended for seven days with effect from 0001 hours on 1 January 2020 until 0001 hours on 8 January 2020. The suspension is pursuant to Section 26(1)(f) of the Goods Vehicles (Licensing of Operators) Act 1995.
2. Under Section 26(6) of the 1995 Act I direct that the operator's vehicles shall not be used under any other operator's licence during the period of suspension.
3. Transport manager David Bridges' repute is damaged but not lost.

Decision: Wales Environmental

4. No case to answer, therefore no regulatory action.

Background

5. On 19 April 2018 vehicle MX61 EVW, on hire from Bridmin to Wales Environmental, was stopped at the roadside by DVSA and found to be fitted with an AdBlue emulator.
6. A public inquiry held in October 2018 considered the issue. Bridmin's case was that the vehicle had been repaired by a DAF dealer Imperial Commercials Ltd on 12 March 2018 and no trace of any emulator had been found. The nature of the repair was such that it would have been discovered had it been present. The same vehicle was repaired by the same dealer again on 27 March 2018 when the emulator was found and – according to Imperial - left in situ at the request of Bridmin. Bridmin flatly denied making any such request and considered that Wales Environmental must have had the emulator fitted some time between 12 and 27 March 2018.
7. I adjourned the inquiry in order to make further inquiries of Imperial. I also wished to wait for the outcome of the conjoined AdBlue appeal cases then before the Upper Tribunal before reaching any final decision on Bridmin/Wales Environmental.
8. In the event, the cases before the Upper Tribunal were postponed several times and were only heard in September 2019. Decisions on most of those cases are still awaited.
9. Meanwhile, Imperial had provided a witness statement made by depot manager Martin Jones to the effect that the mechanic attending the vehicle at the roadside to repair a gearbox fault on 12 March 2018 would not have had cause to look behind the panel on the passenger side of the vehicle and would not therefore have seen an AdBlue emulator behind it. On 27 March 2018, after having discovered the emulator during the course of a different repair, the Imperial mechanic had made direct inquiries of Bridmin who told him to leave the device on the vehicle.
10. In June 2019 I circulated this witness statement to Bridmin asking for comments. Bridmin produced an expert report which reiterated that, to effect the repair on 12

March, the mechanic would have had to have looked behind the panel on the passenger side and would therefore have seen the emulator if it had been there on that date. Since he had not seen it, it followed that it must have been installed after that date during the period when it was on hire to Wales Environmental. The conversation with Imperial during which it was alleged that they (Bridmin) had asked for the emulator to be left in place, was denied.

11. In a final attempt to resolve this apparent impasse, in which two sets of experts were directly contradicting each other, I reconvened the public inquiry on 5 November 2019 in Birmingham.
12. Imperial depot manager Martin Jones gave further evidence. Two aspects of this evidence seemed to me to substantially weaken the case presented by Bridmin:
 - i) the mechanic attending the vehicle on 12 March 2018 would have plugged the Davie diagnostic device through a flap in the passenger footwell and would not have removed the panel and examined the electrical connections in the passenger area;
 - ii) the Davie would not have been used to diagnose all vehicle systems (and therefore detect the emulator). While Mr Jones could not be sure exactly what kind of Davie had been used on this occasion, the likelihood was that it was one which was capable of diagnosing only those systems most relevant to the current problem (in this case the gearbox).
13. Mr Jones remained adamant that Imperial had spoken to someone in Bridmin who had instructed them to leave the emulator in place. This confirmed the contemporaneous record made by the mechanic which was incorporated into the invoice and which made clear Imperial's disquiet about what it had been asked to do [although of course they should still not have done it].
14. In coming to a conclusion about what happened, based on the balance of probability, I have been mindful of the following:
 - i) the vehicle was on a short term hire from Bridmin to Wales Environmental, initially only for a week but, after some problems with it, a few weeks longer. I struggle to see any motivation for Wales Environmental to fit an emulator to a vehicle they intended to return shortly to Bridmin;
 - ii) Imperial quite categorically stated that they had been told on 27 March 2018 by Bridmin to leave the emulator where it was. I struggle to see why Imperial should invent such a claim if it were not true, since Bridmin not Wales Environmental was their regular customer whom they would be unlikely to alienate by making serious but untrue allegations;
 - iii) Bridmin's explanation as to why the device can only have been fitted between 12 and 27 March (and therefore while it was on hire to Wales Environmental) did not stand up to scrutiny. There was a perfectly plausible explanation (see paragraph 12 above) as to why Imperial would not have discovered the emulator on 12 March.
15. In the light of the above, I therefore find, on the balance of probability, that the device was fitted some time before 12 March 2018 by Bridmin. I dismiss the possibility of it

being fitted by previous owners as Bridmin have been in possession of the vehicle since February 2015. The DVSA vehicle examiner advised me that, if the emulator had been fitted prior to that date, problems would have emerged long before March 2018. The AdBlue system would have crystallised and prevented the vehicle from running correctly.

16. In coming to a decision on appropriate regulatory action, I have taken into account the fact that Bridmin appears to be an otherwise compliant operator. Its MOT pass rate is good and prohibition rate low. Further, from AdBlue invoices supplied by the operator, it seems clear that the use of AdBlue emulators is not widespread across its other vehicles. For these reasons, I have chosen to impose a suspension of seven days which in my view strikes an appropriate balance between the seriousness of fitting an emulator and an otherwise compliant operation.
17. I have considered the reputé of the (then sole) transport manager David Bridges. Imperial has been unable to recall to whom it was that their mechanic spoke on 27 March 2018. If that had been found to be David Bridges, I would be removing his good reputé, as it would be unconscionable for a reputable transport manager to order a maintenance contractor to rewire in an AdBlue emulator. I consider that there is sufficient doubt about who exactly in Bridmin gave this instruction to conclude that the removal of Mr Bridges' reputé would be disproportionate. However, there is no doubt in my mind that he should have been aware of the fact that this device was present in one of his vehicles. His reputé is therefore tarnished.
18. As I have concluded that Wales Environmental was not responsible for the fitting of the AdBlue emulator and could not have been aware of its presence, it follows that there is no regulatory action against its licence or the reputé of directors or transport manager.

A handwritten signature in black ink that reads "Nicholas Denton". The signature is written in a cursive, flowing style. Below the signature is a short, horizontal line.

Nicholas Denton
Traffic Commissioner
5 November 2019