



DECISIONS OF THE ACTING TRAFFIC COMMISSIONER FOR WALES

Sandham Groundworks Ltd – OG1136638

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

Decisions made in respect of Sandham Groundworks Ltd OG1136638

1. Adverse findings are made under sections 26(1)(b); 26(1)(c)((i) and (ii); 26(1)(e); and, 26(1)(f) of the Act
2. The operator no longer has the necessary financial resources to hold a restricted operator’s licence, section 26(1)(h) of the Act.
3. The holder of the licence is no longer fit to hold an operator’s licence, section 26(1)(h) of the Act.
4. The operator’s licence is revoked w.e.f. 23:59 hours on 20 December 2019.
5. Anthony Wayne Sandham 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 24 months from the date of revocation

Background

6. A restricted goods vehicle operator’s licence was granted in 2015, at the time of the public inquiry it had authority for 3 vehicles and 10 trailers. The sole director registered with the OTC, Anthony Wayne Sandham (“Wayne Sandham”) was stopped by the police during a roadside check on 08/11/2018, he gave false details which ultimately resulted in a conviction for perverting the course of justice. Additional concerns were also revealed, this led to the public inquiry

Public Inquiry

7. In attendance at the public inquiry held on 22 November 2019 were:

- Wayne Sandham, director until recently
- Anwen Sandham, director (and mother of Owen – and – wife of Wayne)
- Owen Sandham, newly appointed director and son of Wayne & Anwen
- Jason McAdam, counsel
- TE Sarah O'Brien

8. At the conclusion of the hearing I advised that I would be producing a written decision which included revocation of the licence and disqualification of Wayne Sandham.

Evidence

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

- Written public inquiry brief for Sandham Groundworks Ltd OG1136638;
- Contemporaneous handwritten notes from 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).

10. Finances produced were for far less than required for even a single vehicle. I was asked to give a period of 6 months grace, although I pointed out that granting a period of grace was a discretionary matter. At the conclusion of the hearing I indicated that I was not minded to grant a period of grace.

11. Companies House records showed that Anwen Sandham has been a director for Sandham Groundworks Ltd since April 2016, however the operator failed to notify my office of this as required. Within the last few weeks, Wayne Sandham was removed from the licence as a director whilst Anwen Sandham and Owen Sandham were added as directors.

12. On 22/11/2018 a roadside check of an 18 tonne HGV in Ewloe was conducted by TE Helen Meechan. The driver of the Scania T324MJA gave his name as Joseph Barrie Sandham, he was unable to produce his driving licence at the time, claiming that he had left it at home. The driver stated that the operator was his brother.

13. On being requested to produce tachograph charts for that day and the previous 28 calendar days, 15 were produced, all showing the name "Sandham" with no forename. The driver advised that the current day's chart was his, the rest were his son's.

14. A driver licence check revealed that Joseph Barrie Sandham did not hold the required entitlement to drive and the North Wales Police were called to assist.

15. On 08/12/2018 the police contacted TE Sarah O'Brien to advise that the driver was not Joseph Barrie Sandham, instead it was his brother Wayne Sandham. Moreover Wayne Sandham only held an ordinary provisional driving entitlement entitling him to drive a car and other vehicles, but not an HGV.

16. Wayne Sandham would not have had a driver CPC as required because he didn't have any vocational entitlements. (At the hearing I was told that Wayne Sandham passed his car test in the 1980's but didn't send his details to the DVLA, accordingly he never had a full licence of any kind. This changed relatively recently as he passed his car test and obtained a full licence earlier this year.)

17. On 19/12/2018 TE O'Brien contacted the licence holder and spoke with Anwen Sandham and arranged a visit for 27/12/2018. Present at the meeting were TE O'Brien, Wayne Sandham, Joseph Barrie Sandham, Anwen Sandham and PC 2987 Brannan. This resulted in a formal interview at Deeside Police Station on 09/01/2019.

18. At the interview on 09/01/2019 there was attendance from TE O'Brien, PC Brannan, Wayne Sandham and his legal representative. Questions and explanations were asked but this resulted in a "no comment" interview.

19. On 23/08/2019 Wayne Sandham was convicted of perverting the course of justice. The outcome included a prison sentence of 6 months, suspended for 12 months, plus 200 hours of unpaid community work. There were also costs and victim surcharge of £1,200.

20. The tachograph produced at the road check revealed various offences:

- Tachograph incorrectly dated as 23/11/2018.
- Full name not recorded, only the surname "Sandham" appeared in the centre field entry.
- The mode switch was not used correctly to show other work periods such as driver walk round checks (if they were carried out).
- An offence of exceeding 4.5 hours driving without the required break – there was a total of 5 hours 34 minutes between 08:20 hours and 14:55 hours with only a 15 minute break.

21. At the hearing it emerged that the drivers' hours offence was committed by Wayne Sandham, the mode switch offences were committed by Owen Sandham, he also failed to insert his full name on tachographs.

22. Wayne Sandham told me that as well as driving an HGV on the occasion when he had been stopped by the police, he had very occasionally driven it on other

instances. This was rare but when his wife found out she was furious with him. He also drove vehicles that would have been covered by a full car licence if he had had one.

23. The family business had reduced in size, at one time about 33 people had been employed, but it now only employed the 3 members who attended before me, together with two named individuals. Wayne Sandham told me that he undertook groundwork and left the administration to his wife.

24. I was told that son, Owen Sandham, had taken out a mortgage to assist the family business but almost all of the money had been expended on the legal costs of the criminal proceeding and of those before me. I was told that currently there was work being undertaken with further jobs in the pipeline.

25. Wayne Sandham had owned 75% of the shares and although he had come off as a director a few weeks ago, it was unclear whether his shareholding had been transferred to his son, Owen. If they weren't yet transferred, it was intended that this comes about. The remaining 25% were owned by Anwen Sandham.

26. A description of the company's assets were given to me, some vehicles and plant were owned by the operator, others were subject to finance.

27. The brief for the hearing dealt primarily with the circumstances that led to the conviction, however a factor that was put forward in mitigation was that maintenance was good. When I enquired about tangible evidence of good maintenance it emerged that the OCRS score for both roadworthiness and traffic was red. Additionally the MOT first time fail rate was significantly higher than the national average. When Owen gave evidence he referred to a 10 week PMI period, but I pointed out that it should have been no more than 6 weekly. Owen was not aware of the need to obtain permission to change the PMI period and overly relied on the maintenance provider, indeed I made general comment on a number of features relating to the maintenance provider that were less than flattering. The maintenance regime could not justifiably be said to be good as claimed despite there not having been any maintenance investigation.

28. Wayne Sandham assured me that he accepted his responsibility and would not seek to take any management role in the business. If possible he would be a manual worker, a groundworker and occasionally drive vehicles where he was now lawfully able to do so.

29. Owen Sandham told me that he sought to take a management role in the business and would ensure that his father had no management role. Owen Sandham told me that he did not know that his father didn't have an appropriate driving licence, in fairness to him there was no evidence to contradict this.

30. During the hearing I heard how Anwen and Owen Sandham were willing to attend operator licence awareness training, but they had only investigated this within the last few days. The same applied to potentially joining the RHA and having audits, I pointed out that this could have been addressed much earlier and appeared to coincide with receipt of the call in letter for the hearing.

31. Representations by and on behalf of Anwen and Owen Sandham were to effect that they wanted to continue the family business.

Material considerations and findings of fact.

32. 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.

33. Having watched and listened to Wayne Sandham give evidence, I make a finding that his knowledge of operator licensing has always been pitifully poor. His driving vehicles whilst never holding (until very recently) any form of full driving licence reflects a poor understanding of and ability to be compliant with a regulatory regime.

34. Wayne Sandham has for a number of years been the controlling mind of the limited company holding the operator's licence. His lack of knowledge and skills and his blatant dishonesty resulting in his conviction is such that I don't trust this operator. I am of the firm view that an order that did not include one of personal disqualification of Wayne Sandham would be wholly wrong, perhaps even perverse.

35. Neither Anwen nor Owen Sandham were particularly impressive, although I am satisfied that with appropriate undertakings the family business might exist in some form in the future.

36. 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."

37. 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."

38. 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.”

39. I have sought to identify positive features in my balancing exercise but struggle to do so. Whilst the directors at the time of the hearing are not in the same category of incompetence as the incompetent and dishonest Wayne Sandham, Wayne Sandham’s failures are such when conducting my balancing exercise, that they outweigh any positive features for this operator.

40. When I ask myself the Priority Freight question, I do not trust this operator and answer in the negative. I answer the 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 operator’s licence is revoked and the business closes. My decision to revoke the licence is an inevitable consequence of the facts that emerged.

41. When considering section 28 of the 1995 Act I reflect on statutory guidance from the STC, an order of two years disqualification is proportionate in this case. Aside from his dishonesty, his lack of skills is such that he is unlikely to ever satisfy a TC as to repute or fitness to hold a licence.

Decisions

42. I make decisions as set out in paragraphs 1-5, above.

Other

43. There was discussion on the potential consequences of my making an order of revocation in this case. I have not disqualified the limited company and so it can apply for a licence, but if it does so there will be a need for assurances and undertakings. I anticipate that a public inquiry will be needed for any full grant, although an interim might be considered if sufficiently robust undertaking were offered. There would be a gap between revocation and any interim being granted.

44. If an application for a new licence is made as set out in paragraph 43, the following undertakings would assist:

1. Both Anwen and Owen Sandham will attend an accredited operator licence awareness training course within 2 months of this decision.
2. Wayne Sandham will never play any management role in the business, although he can be an employee as a groundworker.
3. Within 7 days of any form of licence being granted a specialist transport consultant will be employed to ensure training of the two directors as to their

responsibilities and setting up systems to satisfy an independent audit in 12 months time.

4. An independent audit will be conducted 12 months after any licence grant and copied to both the OTC for Wales and the local DVSA office. The audit will be of maintenance systems and documentation – and additionally – drivers' hours and records compliance, including Working Time Directive compliance.

Nick Jones
Acting Traffic Commissioner for Wales
Comisiynydd Traffig Dros Dro

24 November 2019