



WEST MIDLANDS TRAFFIC AREA

DECISION OF THE TRAFFIC COMMISSIONER

PUBLIC INQUIRY HELD IN BIRMINGHAM ON 20 NOVEMBER 2019

**OPERATOR: TRAVEL EXPRESS LTD
T/A LET'S GO
PD1140735**

Decision

1. The standard national PSV licence held by Travel Express Ltd is varied under Section 17(2)(d) of the Public Passenger Vehicles Act 1981 ("the 1981 Act") so that the maximum number of vehicles which may at any one time be used under the licence is reduced from 20 to 15. The variation takes immediate effect and is for an indefinite period of time.
2. To avoid loss of repute as transport manager, Kishan Chumber must by 29 February 2020:
 - i) cease maintaining vehicles himself and appoint at least one IRTEC accredited mechanic with overall responsibility for maintenance (or contract maintenance out entirely); and
 - ii) appoint an additional transport manager with lead responsibility for timetable planning and monitoring and management and disciplining of drivers.
3. The good repute of previous transport manager Nimrod Asbury is retained.
4. Under Section 155 of the Transport Act 2000 ("the 2000 Act"), the operator is fined a total of £6,000 for failure to operate according to the timetable registered with the traffic commissioner.
5. The following undertakings have been added to the licence:
 - i) vehicles will be given roller brake tests at least every 12 weeks;
 - ii) vehicles will be given regular safety inspections at least every 5 weeks;

Background

1. Travel Express has attended public inquiries in 2011 (when it received a warning for prohibitions and poor maintenance practices) and 2015, when similar problems were

found and Mr Chumber lost his good reputation as transport manager and was disqualified until he retook and passed the transport manager CPC exam. The company was also fined £6,500 for failing to operate buses in a timely manner. Following the company's failure to nominate a new transport manager, the licence was revoked in August 2015.

2. The company was granted the present licence in March 2016, on condition that Kishan Chumber had no involvement in the transport manager role generally, timetable scheduling, discipline and control of drivers and all aspects of vehicle maintenance.
3. Mr Chumber passed the transport manager CPC in February 2017. In January 2019 he applied to have the above conditions removed and to act as the transport manager on the licence. After hearing his arguments at a preliminary hearing I granted the application.

DVSA investigations

4. In May 2019 DVSA vehicle examiner Wayne Goodhead carried out a maintenance investigation into Travel Express Ltd. He found that the operator had a high MOT final failure rate (35% against a national average of 8%) and a high prohibition rate (35% over the last two years, national average 17%) including a prohibition for a tyre which the operator had cut too close to the cords. Further, two vehicles had been involved in accidents but the required notification to DVSA had not been made. The driver defect reporting system was clearly ineffective and no random checks on drivers had been carried out by management.
5. In September 2019 I received a report from DVSA traffic examiner Austin Jones. He had monitored the timetable performance of local services run by Travel Express Ltd and had recorded a non-compliance rate of 51% of the 184 journeys he had observed (compliance being defined as operating within the one minute early and five minutes late window). He had also interviewed a driver who had told him that he was instructed to run a few minutes in advance of a rival operator. Mr Jones reported that he had agreed an improvement plan in June 2019 with the operator but by September he had detected no real improvement.

Public inquiry

6. In the light of the above, I decided to call the operator and both current and previous transport managers (respectively, Kishan Chumber and Nimrod Asbury) to a public inquiry. The call-up letters were sent on 10 October 2019.
7. The public inquiry took place in Birmingham on 20 November 2019. Present were director and transport manager Kishan Chumber and former transport manager Nimrod Asbury. DVSA examiners Wayne Goodhead and Austin Jones were also present. The operator was represented by Elliot Willis from NA Legal.

Evidence of the operator

8. Mr Chumber made the following points:
 - i) his fleet suffered from age-related problems but he had 16 new (to him) vehicles on order which he hoped to put into service in January 2020;
 - ii) tyres more than 10 years old were no longer used;
 - iii) TfWM was going to lease "Ticketer" machines to him in early 2020 which should help drivers adhere to the timetable;

- iv) the MOT pass rate over the last six months was now 75%;
- v) no one had been injured in the two accidents so he had omitted to notify them until prompted by DVSA;

Undertakings offered

9. On behalf of the operator, Mr Willis offered a number of undertakings:
- i) that drivers would have further training on walk-round checks;
 - ii) that Mr Chumber would attend a transport manager CPC refresher course;
 - iii) that the operator would arrange to be audited every six months;
 - iv) that the frequency of vehicle inspections would be increased to five weeks;
 - v) that roller brake tests would be carried out on each vehicle every 12 weeks.
10. I adjourned the inquiry to take a written decision.

Considerations

11. In some ways I regret having reinstated Mr Chumber's good repute at the beginning of 2019. While he had fulfilled TC Jones's requirement that he retake and pass the transport manager CPC exam and there had been a reduced rate of three prohibitions in the two-year period 1 January 2017 to 31 December 2018, the restoration of Mr Chumber's repute was followed by seven roadworthiness prohibitions in 2019 and a very poor MOT pass rate of 65%. The same timetabling incompetence which had caused TC Jones to ban Mr Chumber in 2016 from any involvement in timetabling has re-emerged since that ban was lifted in January 2019, and there is some evidence that vehicles have been deliberately run a few minutes ahead of rivals, regardless of the timetable.
12. It is difficult to reach any other conclusion than that Mr Chumber has slipped back to his old slipshod methods of management, timetabling and operating. I accept that on the whole he has good intentions and is not setting out deliberately to fail to comply with vehicle roadworthiness requirements, but I fear that history suggests that he may not have it in him to be a compliant operator over an extended period of time.
13. Part of the problem appears to be that Mr Chumber is spread too thinly. He is responsible as director for the running of the business generally, as transport manager for scheduling, driver management and discipline and general oversight of compliance, and all this while himself performing much of the maintenance on the company's vehicles.

Findings

14. I have reached the following formal findings:
- i) that the operator has failed without reasonable excuse to operate local services according to the registered timetable (Section 155 of the 2000 Act refers);
 - ii) that the operator has failed to fulfil its undertaking to keep vehicles fit and serviceable (Section 17(3)(aa) of the 1981 Act refers);
 - iii) that the operator's vehicles have incurred roadworthiness prohibitions (seven in 2019 alone)(Section 17(3)(c) of the 1981 Act refers);

- iv) that the operator has failed to fulfil the obligation in Section 20 of the 1981 Act to notify accidents which could have affected safety.

Decisions

Variation of the licence

15. Owing to the high rate of MOT failure and prohibitions I have decided to reduce the number of vehicles which the company may operate from 20 to 15. I need to be sure that it can operate compliantly at its current service levels before adding to its fleet in service.

Kishan Chumber

16. I have come very close to removing Kishan Chumber's good repute as transport manager. I have decided to refrain from doing so **BUT**: in order for this licence to continue and for him to retain his repute I require him to step back from some of his responsibilities which are clearly too much for a fleet of this size. To that end, he must by 29 February 2020:

- i) cease maintaining vehicles himself and appoint at least one IRTEC accredited mechanic with overall responsibility for maintenance (or contract maintenance out entirely); and
- ii) appoint an additional transport manager with lead responsibility for timetable planning and monitoring and management and disciplining of drivers.

17. Under Section 155 of the Transport Act 2000 a traffic commissioner can impose a penalty on the operator where it has failed (without reasonable excuse) to operate a local service under section 6 of the Act. Paragraph 60 of the Senior Traffic Commissioner's guidance document 14 sets out suggested levels of penalty for various degrees of non-compliance. Where timetable compliance is below 80% (as it is in this case) a starting point of between £400 and £550 per authorised vehicle is suggested. Traffic commissioners must also follow the principle of proportionality when considering the amount of penalty (if any) to impose, taking care to ensure that the amount of the penalty reflects the scale of the failure.

18. I have had regard to the fact that the No 11 route in Birmingham (where the principal non-compliance has been found) is a long and congested one and even the biggest operator on it can struggle to run to timetable. There was a degree of reasonable excuse which has brought the level of non-compliance up a little from 51%, but still to nowhere near 80%. I have also borne in mind that the passengers tend to be less inconvenienced by an operator's failure to run to time on a route with multiple alternative operators who provide a frequent service. Against these mitigating factors is i) a potentially aggravating factor of deliberate early running in front of a rival's service; and ii) the fact that the company has been fined before for non-compliant running and does not seem to have made any lasting improvements. Taking account of both mitigating and aggravating factors, I have decided to impose a fine of £300 per authorised vehicle, making a total of £6,000.

19. I have also accepted undertakings offered by the operator concerning roller brake testing and the frequency of vehicle inspections. The fact that I have not formally recorded the other undertakings offered does not mean that I do not consider them a good idea.

20. This is really the operator's last chance to get things right. I doubt that the licence could survive another public inquiry.

Nicholas Denton

Nicholas Denton
Traffic Commissioner
19 December 2019