



WEST MIDLANDS TRAFFIC AREA

DECISION OF THE TRAFFIC COMMISSIONER

PUBLIC INQUIRY HELD IN BIRMINGHAM ON 19 DECEMBER 2019

OPERATOR: DISCOUNT TRAVEL SOLUTIONS LTD
PD1121581

Decision

1. The standard national PSV licence held by Discount Travel Solutions 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 six to four. The variation takes immediate effect and is for an indefinite period of time.
2. The good repute of previous transport manager Inderjit Singh is retained.
3. Under Section 155 of the Transport Act 2000 (“the 2000 Act”), the operator is fined a total of £1,200 for failure to operate according to the timetable registered with the traffic commissioner.
4. 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 4 weeks;

Background

1. Discount Travel Solutions Ltd holds a standard national PSV licence for six vehicles. The licence was granted in September 2013. The sole director of the company is Kamaldeep Singh Mann. The nominated transport manager is Inderjit Singh.
2. The operator appeared at a public inquiry in September 2014 when the then traffic commissioner curtailed the licence from six to two vehicles for reasons of financial standing and fined the company £300 (£50 x 6 discs) for failure to operate local bus services in accordance with registered details. The curtailment was lifted in October 2015 and the authorisation for six vehicles restored.

DVSA investigations

3. In September 2019 I received a report from DVSA traffic examiner Robert Lees. He had monitored the timetable performance of local services run by Discount Travel Solutions Ltd following a complaint from a passenger that the operator's last service of the day on the 11A (Outer Circle) had failed to complete its route. Mr Lees had taken observations on six different days between 10 and 26 July 2019 and had recorded an overall non-compliance rate of 78% of the 28 services he had observed (compliance being defined as operating within the one minute early and five minutes late window). Eight services failed to run at all; six were more than one minute early and a further eight were more than 5 minutes late. Only six services ran within the window of tolerance.
4. The operator's response was that around seven of the journeys had experienced unusually heavy traffic; five non-compliant journeys had been caused by some kind of vehicle malfunction (faulty lights, door, engine overheating etc); two were caused by a driver being taken ill; and in seven cases the driver had no excuse.
5. In October 2019 I received a report from DVSA vehicle examiner Austin Jones which recorded an unsatisfactory maintenance assessment of the operator. The reasons were: i) a higher than average prohibition rate (37% prohibition rate over the past two years as opposed to the national average over the same period of 17%); and ii) a high (40%) MOT failure rate, with failures for multiple items on each occasion. All failures had included brake system failures. Mr Jones concluded that the standard of preparation for MOT test was clearly poor.

Public inquiry

6. In the light of the above, I decided to call the operator and transport manager to a public inquiry. The call-up letters were sent on 15 October 2019.
7. The public inquiry eventually took place in Birmingham on 19 December 2019 (I had agreed a requested adjournment from the original date of 21 November 2019). Present were director Kamaldeep Singh Mann and transport manager Inderjit Singh. Mirhal Johal, transport consultant, also attended in support of the operator. DVSA examiners Robert Lees and Austin Jones were also present. The operator and transport manager were represented by Murray Oliver of Oliver Legal Solicitors Ltd.

Evidence of the operator

8. Mr Oliver made the following points on behalf of the company:
 - i) the operator had increased the number of service checks it made. Recent figures showed a much lower level of non-compliance than that found by TE Lees;
 - ii) "Ticketer" machines which monitored early/late running in real time were to be installed in vehicles by the end of January 2020;
 - iii) the troublesome 72 and 11A routes were to be discontinued, with three vehicles (all Ticketer equipped) remaining in service on the 11C;
 - iv) the main reason for the high level of non-compliance was the heavy and unpredictable nature of the traffic on the very long and complex 11 route;
 - v) the company had tightened procedures since Mr Lees's monitoring exercise. New drivers had a day's paid training to familiarise themselves with the route and were accompanied by management on their first day in service;

- vi) vehicles were now given safety inspections at four week intervals rather than the previous five;
 - vii) vehicles were now being given two pre-MOT inspections by different providers rather than just the one.
9. Mr Oliver suggested that there was sufficient evidence that the operator could be trusted to continue to improve. If there were to be a financial penalty for the non-compliance, he suggested that it fall somewhere between the DVSA's findings and the more recent observations of the operator. The operator would prefer to remain at six vehicles but could cope with a curtailment to four.
10. I adjourned the inquiry to take a written decision.

Considerations

11. I accept that the operator's own figures give a better picture on compliance than do those of TE Lees, although the operator's figures have been compiled through its own observations rather than through any objective source such as Ticketer data. They may also be somewhat selective: I noticed for example that the operator's figures for July 2019 (the same month in which Mr Lees carried out his monitoring exercise) looked only at 15 journeys, 13 of which were apparently compliant.
12. I have some sympathy with the difficulty experienced by operators in practice in adhering to timetables on long and busy routes like the 11, where the variability of traffic conditions from day to day does make it difficult to meet the six minute window of tolerance. I looked again at the results of Mr Lees's exercise and the operator's comments upon it. Of the journeys observed, six ran more than one minute early – for which heavy traffic is clearly not an excuse. Three were caused by a fault with the vehicle, which is also within the operator's control, as it is expected to send vehicles out into service which are capable of completing the journey without breaking down. So even if heavy traffic is accepted as a reasonable excuse in all the cases it was pleaded (although I note that the traffic on the Outer Circle is invariably heavy), we are left with a non-compliance rate of around 30%, admittedly from a small sample.
13. The operator's prohibition and MOT failure rates are, I consider, unacceptably high. I agree with Mr Lees's assessment that the standard of maintenance and MOT preparation is poor.

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);

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 six to four. I need to be sure that it can operate compliantly at its current service levels (its current peak vehicle requirement is three, plus a small margin) before adding to its fleet again.

16. 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.
17. 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 22%, 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 the fact that the company was fined by my predecessor in 2014 for non-compliant running and does not seem to have made any lasting improvements in the meantime. Taking account of both mitigating and aggravating factors, I have decided to impose a fine of £200 per authorised vehicle, making a total of £1,200.
18. 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.



Nicholas Denton
Traffic Commissioner
31 January 2020