



ALPHA SKIPS 2010 LTD (OK1140180)

GOODS VEHICLES (LICENSING OF OPERATORS) ACT 1995

TRAFFIC COMMISSIONER'S WRITTEN DECISION

Decision

Public Inquiry

1. Pursuant to adverse findings under Section 26(1)(b), (c)(i), (c)(ii), (c)(iii), (e) and (f) of the Goods Vehicle (Licensing of Operators) Act 1995, Licence OK1140180 is revoked with effect from 23:45 on 6 February 2020.
2. Alpha Skips 2010 Ltd, Mr Terence James Osborne (current director) and Mr Keith Hillman (former director) are disqualified from holding or obtaining an Operators Licence or being engaged in the management, administration or control of any entity that holds or obtains such a Licence in Great Britain for a indeterminate period from 23:45 on 6 February 2020.

Driver Conduct Hearings

3. The vocational driving entitlement of Mr Keith Hillman is suspended from 23:59 on 6 February 2020 for a period of 56 days.
4. The vocational provisional driving entitlement of Mr Osborne is revoked and he is disqualified from holding or obtaining such an entitlement for an indeterminate period from 23:59 on 6 February 2020.

Background

5. The fully history is set out in the case summary in Hearing bundle on pages 4 – 8. DVSA carried out a traffic enforcement investigation into Alpha Skips 2020 Ltd ('the Operator') after a roadside encounter with Mr Hillman in November 2018. The outcome of the investigation was that there were virtually no systems for managing driver hours, tachographs and working time directive. The Traffic Examiner found numerous offences including those at the most serious level were being committed, especially by the two directors – Mr Hillman and Mr Osborne. Indeed, subsequently Mr Hillman was prosecuted for seven accounts of

knowingly making a false record and five counts of being in possession of and using two different driver cards in his own name. He admitted a further 16 offences in interview. Mr Hillman received a three-month custodial sentence for each offence to run concurrently, suspended for 13 months. The other offences were dealt with by way of fines.

6. Accordingly, I called the Operator to Public Inquiry, together with the two directors as drivers and two other casual drivers. The driver decisions in relation to the two casual drivers are dealt with separately.

Hearing

7. The Public Inquiry and Vocational Driver Conduct Hearings commenced and concluded on 22 January 2020. I confirmed that I would issue a written decision in relation to the Public Inquiry and the Vocational Driver entitlements of Mr Hillman and Mr Osborne within 7 days.

Documents and Evidence

8. Prior to preparing this written decision I have reviewed the following :
 - a. Public Inquiry brief and bundle of documents
 - b. Driver conduct papers
 - c. Witness statement of Mr Osborne dated 17 January 2020
 - d. Letter dated 15 January 2020 notifying the resignation of Mr Hillman as director with Companies House and VOL paperwork attached.
 - e. Operator exhibit "Alpha PI No.1"
 - f. My handwritten contemporaneous notes.
 - g. *South Bucks District Council and another V Porter(FC) (2004) UKHL33, English v Emery Reimbold & Strick Ltd [2002 EWCA Civ 605 and Bradley Fold Travel Limited & Peter Wright v Secretary of State for Transport [2010] EWCA Civ 695* in relation to written decisions generally;
 - h. Upper Tribunal Decisions and other guidance I consider relevant to this determination as listed elsewhere in this Decision;
 - i. The Senior Traffic Commissioner's Statutory Guidance and Statutory Directions current versions (SGSD).

The Issues

9. The Operator, Mr Osborne and Mr Hillman accept all the offences set out in the Public Inquiry Brief save for one dated 05 September 2018 in relation to Mr Osborne (which I have discounted for the purposes of this decision as it makes no material change to the outcome). It was accepted the case has a starting point of SEVERE, including revocation and disqualification. The extant issue is essentially the length of any period of run off in terms of the revocation and any disqualification which would impact the ability of the company to survive. It was acknowledged that my role is that of road safety, but I was asked, with assurances in terms with training and knowledge etc that this is something that should influence my decision. I reminded all that the Operator already had over a year to sort itself out, having known of the first issues since November 2018. However, I decided that I would

take some time away from the Public Inquiry room and give it consideration to my final decision, prior to issuing this written decision.

Consideration and Findings

10. The Traffic Examiner report catalogues an Operator which not only failed to have systems in place but had directors who were content to ignore the rules and in terms of outcome worked beyond their lawful hours for commercial gain. Mr Hillman and Mr Osborne both gave the explanation that they did not realise how serious it was. This is not a compelling explanation, particularly in relation to Mr Hillman as the offence of knowingly making a false record is an act of dishonesty. One of the reasons I was given for the financial impact of any regulatory action requiring the use of an external driver, was the profitability impact on the company. However, the company gained an unfair competitive financial advantage for years because the lorries were working longer than they should have been with the same drivers.
11. I am told and I accept that since March 2019 there have been no further driver hours infringements for Mr Hillman. However, he has perpetually failed to record sufficient time for an effective walk round check. Indeed, it is often between 1 and 4 minutes. Even though the infringement reports repeatedly raise this as an issue, the company did nothing about it, either in terms of disciplinary action or training. Mr Hillman admitted that since January 2019 he had taken no part at all in monitoring or controlling the transport operations. It was suggested that he was doing so beforehand, but the findings of the Traffic Examiner report show in fact that there were no systems in place in reality.
12. Since January 2019 Mr Osborne said he had taken over responsibility for monitoring and control of the transport operations. Between January 2019 and March 2019, all that was done was to leave the company administrator to find a Transport Consultant. Systems were put in place in terms of driver hours and tachographs, but Mr Hillman and Mr Osborne left it to the company administrator to deal with the Transport Consultant and she verbally spoke to them. This is no system at all. The directors continued to abdicate their responsibility, having engaged a Transport Consultant they continued to affectively see themselves as “just drivers”. Mr Osborne continued in the same noncompliant way in terms of the driver hours and tachographs until September 2019 when the company got a second digital vehicle. This appears to have assisted Mr Osborne to an extent, but he too is not doing an effective walk around check in terms of the actual check itself or the recording of it. Mr Osborne suggests that is simply down to him not understanding the need to change the mode switch to ‘other work’ before doing the walk round check, but I cannot accept this because on occasion he has changed the mode switch and then the walk round is simply not long enough. In any event it is evident the checks were cursory, see below.
13. The maintenance record that were produced to the Public inquiry were a cause for concern. There are numerous driver reportable items on those sheets with no corresponding driver defect report. For the period October, November and December 2019 there are only 4 driver defect sheets with any defects on at all. Those are poorly completed and do not have the actual defect rectification work set out or the date it was done in them. None of them

corresponds to the PMI sheet, save for one that may do but that suggest that a lens cover was not replaced for 9 days. There is a reference to replacing bulbs on one sheet but it is not clear to which light/lamp etc. There is no brake testing regime of any worth. The contractor does predominantly an unladen decelerometer. There is one laden decelerometer with no brake temperatures and one roller brake test which is unladen. Further, tyres have been changed between PMI's but there are no record of when they were changed, which wheels were changed and whether proper torque and retorque were done. Mr Hillman suggest that they were but as he was busy driving one vehicle, he has no idea what happened with the other vehicle.

14. The Transport Consultant confirmed that he had been predominately engaged in the driver hours and tachographs. He had set up the forward planner and filing system. He gave some advice in terms of the maintenance including walk rounds but there is nothing in the paperwork that suggests any meaningful change.
15. The Upper Tribunal helpfully set out the marker in 2009/225 Priority Freight Limited & Paul Williams that *'Promises are easily made, what matters is whether these promises will be kept: actions speak louder than words'*. I remind myself of the clear guidance set out by His Hon. Michael Broderick, Principal Judge for Traffic Commissioner Appeals in NT/2013/82 Arnold Transport & Sons Limited *'It is important that operators understand that if their actions cast doubt on whether they can be trusted to comply with the regulatory regime they are likely to be called to a Public Inquiry at which their fitness to hold an operator's licence will be called into question. It will become clear, in due course, that fitness to hold an operator's licence is an essential element of good repute. It is also important for operators to understand that the Head of the TRU is clearly alive to the old saying that: "actions speak louder than words", (see paragraph 2(xxix) above). We agree that this is a helpful and appropriate approach. The attitude of an operator when something goes wrong can be very instructive. Some recognise the problem at once and take immediate and effective steps to put matters right. Others only recognise the problem when it is set out in a call-up letter and begin to put matters right in the period before the Public Inquiry takes place. A third group leave it even later and come to the Public Inquiry with promises of action in the future. A fourth group bury their heads in the sand and wait to be told what to do during the Public Inquiry. It will be for the Head of the TRU to assess the position on the facts of each individual case. However it seems clear that prompt and effective action is likely to be given greater weight than untested promises to put matters right in the future.'*
16. When I pose the question, helpfully suggested in Priority Freight: how likely is it that those before me will, in future, operate in compliance with the operator's licensing regime, the answer must be that I cannot satisfy myself on balance that it will. Actions speak louder than words and the steps taken to date are limited compared to the ongoing deficiencies. There is a lack of competence within the business which could easily have been remedied prior to the hearing. Instead the relevant individuals have only attended a half day DVSA new operator seminar and that was on the cusp of the hearing. This deficiency remains patently apparent on the statutory records.

17. I turn then to the question ‘*is the conduct of the operator such that the operator ought to be put out of business*’ as per 2002/217 Bryan Haulage No.2. I am told that the business will fold quickly if it cannot operate vehicles or it is reduced to one vehicle. However, the financial modelling produced is unsophisticated and I therefore give it limited weight. In my judgement the answer is that for the reasons set out above, it does deserve to be put out of business as at the date of the Inquiry. It has failed to heed previous warnings and proceeded to disregard road safety and fair competition. When I pose the question whether other operators expect me to remove the Operator from the system, I am satisfied on balance they would say “Yes”. Whilst the proportionality principle requires Traffic Commissioners to make decisions which are commensurate with the merits of the case the decision must focus on the impact to road safety and fair competition that flow from the factual findings, regardless in which order the questions above are posed. I do not trust that the Operator will conduct itself under any Licence in a compliant manner moving forward and hence this decision. Accordingly, I find that the Operator is no longer fit to hold a Licence and I have reached the decision set out in paragraph 1 above.

18. I have reminded myself of the helpful guidance on disqualification from the Upper Tribunal set out starting at paragraph 58 of the Statutory Guidance and Statutory Direction Document no. 10 on the Principles of Decision Making:

Disqualification is a potentially significant infringement of rights and the Upper Tribunal has indicated that whilst there is no ‘additional feature’ required to order disqualification it is not a direction which should be routinely ordered. There may be cases in which the seriousness of the operator’s conduct is such that a traffic commissioner may properly consider that both revocation and disqualification are necessary for the purposes of enforcing the legislation. The provisions are in general terms, consistent with the concept of deterrence, but assessment of culpability and use of words such as penalty should be avoided. The case law indicates a general principle that at the time the disqualification order is made that the operator cannot be trusted to comply with the regulatory regime and that the objectives of the system, the protection of the public and fairness to other operators, requires that the operator be disqualified.

It continues at paragraph 59:

In certain circumstances a traffic commissioner may order that an individual is not only disqualified from holding or obtaining an operator’s licence but also from being involved in management, administration or control of the transport operations of an entity that holds or obtain such a Licence in Great Britain. The Upper Tribunal had regard to a decision of the Transport Tribunal and in particular that a traffic commissioner must “ensure that the purpose of an order is not undermined or defeated by a disqualified person becoming involved with the management of another operator’s licence.” This will be even more important where a traffic commissioner is concerned regarding the risk of “fronting”.

19. In 2010/29 David Finch Haulage the then Transport Tribunal said: “The principles that derive from these and other cases on the point can be simply stated. The imposition of a period of disqualification following revocation is not a step to be taken routinely, but nor is it a step to be shirked if the circumstances render disqualification necessary in pursuit of the objectives of the operator licensing system. Although no additional feature is

required over and above the grounds leading up to revocation, an operator is entitled to know why the circumstances of the case are such as to make a period of disqualification necessary. Additionally, periods of disqualification can range from comparatively short periods to an indefinite period, and can be confined to one traffic area or be extended to more than one”.

20. Directors who commit offences; disregard the undertakings on the Licence and their purposes; abdicate responsibility to monitor and control the transport operations and fail to obtain the necessary skills to do so should not be taken by surprise if disqualification is found to be appropriate. The possible consequences for serious failings over a sustained period are in the public domain in terms of the STC statutory Documents and the publication of Traffic Commissioner written decisions. As at the Public Inquiry Mr Osborne and Mr Hillman remain a threat to public safety. Accordingly, I have reached the decision set out in paragraph 2 above.
21. The disqualification is for an indeterminate period. This means that an application can be made to lift the disqualification can be made at any time. The test is helpfully set out in 2014/052 John Pilkington. This should help focus the individuals attention. This is not a case of immediately putting in a new application and requesting an interim and then scrabbling around to put a positive case together. The disqualification needs to be lifted first before an application can be made and for any interim to be granted, mandatory grounds must be met as provided for by section 24 of the 1995 Act.
22. Further, I put the Operator on notice at the hearing that on the evidence before me a Standard National Licence is required. If a new Restricted Licence is pursued then the legal basis must be clearly set out.

Driver decisions

23. Based on the STC Statutory Document No.6 the starting point is for Mr Hillman’s vocational entitlement to be revoked and disqualification in terms of years not months. However, I have taken into account the lack of infringements in recent months and the salutary lessons from receiving a suspended custodial sentence. However, a period of suspension remains appropriate for him to reflect on the lessons learnt at the hearing on his wider duties as a professional driver.
24. Mr Osborne holds a provisional entitlement but the duties as a professional driver include all those in the field. Mr Osborne failed for years to properly abide by the requirements and as recently as September 2019 was infringing the rules. He will need to show a more professional approach if he seeks to drive larger vehicles in future.



Miss Sarah Bell
Traffic Commissioner
Written decision: 23 January 2020