



WEST MIDLANDS TRAFFIC AREA

DECISION OF THE TRAFFIC COMMISSIONER

PUBLIC INQUIRY HELD IN BIRMINGHAM ON 8 JANUARY 2020

ROGER LLEWELLYN

Decision

1. Roger Llewellyn Ltd and director Roger Llewellyn are disqualified for two years, seven months and 26 days, until 10 August 2022, from holding or obtaining any type of operator's licence in any traffic area and (in Mr Llewellyn's case) from being the director of any company holding or obtaining such a licence, pursuant to section 28 (1), (4) and (5) of the Goods Vehicles (Licensing of Operators) Act 1995 ("the 1995 Act").

Background

Upper Tribunal decision

1. In its decision dated 22 October 2019, the Upper Tribunal dismissed an appeal by Roger Llewellyn Ltd against my decision of 8 July 2019 revoking the company's operator licence. However, it upheld the appeal of both the company and its director Roger Llewellyn against the three year disqualification orders imposed in the same decision. The Upper Tribunal stated that "we are satisfied that the TC's failure to invite submissions as to the effect and length of the orders of disqualification was an error which must be rectified by inviting written submissions from the company and Mr Llewellyn and giving them an opportunity to appear at a further public inquiry if they wish. It follows that the orders of disqualification are set aside and the issue remitted to the TC for further consideration."
2. In commenting on the disqualification orders, the Upper Tribunal stated: "We do not go so far as to say that an order of disqualification was disproportionate in principle as we are satisfied that it was not. It would be an affront to other compliant and law-abiding operators if, in a case such as this, an order of disqualification was not made and it would certainly send the wrong message out to the industry. The issue is the length of the disqualification."
3. On 24 October 2019, my clerk accordingly wrote to Roger Llewellyn Ltd to invite written submissions concerning the effect that any potential disqualification orders and their length might have on the company and its sole director Roger Llewellyn. On 4 December 2019 my office received an email from Roger Llewellyn's legal representative, barrister Helen Newbold, to the effect that her instructions were to seek

that the matter of potential disqualification be dealt with at a public inquiry, with written submissions to be presented seven days prior to the public inquiry date (which was subsequently fixed for 8 January 2020).

Written submissions

4. On 31 December 2019, Ms Newbold duly submitted written representations. Her submission made the following points:
 - i) disqualification was not mandatory following a licence revocation;
 - ii) the traffic commissioner should not just consider the failures of the past but also what had been put in place to address compliance: the decision should be based on the situation pertaining at the date of the public inquiry;
 - iii) that my remarks at the conclusion of the inquiry indicated that my level of confidence in Roger Llewellyn was somewhat undecided but did not fall into the category of “no confidence”;
 - iv) Roger Llewellyn had taken several steps to improve compliance **before** the public inquiry in June 2019 (the submission listed these actions);
 - v) this had been the operator’s first public inquiry since the licence had been granted in 2008;
 - vi) the revocation of the licence with effect from 10 August 2019 and the time it would necessarily take to consider any new application, almost certainly at a public inquiry, already amounted to a significant sanction;
 - vii) the disqualification orders had thus been wholly disproportionate.

Further information

5. In preparing for the new public inquiry I noted that, since the inquiry on 27 June 2019, Roger Llewellyn had (on 23 August 2019) been convicted at Shrewsbury Crown Court for four offences of making a false tachograph record and eight other drivers’ hours offences ranging from failing to use a tachograph sheet or card to exceeding the maximum number of permitted hours driving. He was sentenced to three separate sentences of six months imprisonment (suspended for 12 months and to run concurrently) for three offences of making a false record, with no separate penalty for the other nine offences.

Public inquiry

6. The public inquiry was held in Birmingham on 8 January 2020. Present were Roger Llewellyn and counsel Helen Newbold. Ms Newbold stressed the positive actions Mr Llewellyn had taken in advance of the June 2019 inquiry. He had brought in transport consultant David Parry to improve compliance in late 2018, before even the initial DVSA investigation let alone the public inquiry. He had built up a good reputation over the years with clients, some of whom had provided references for the public inquiry. A three year disqualification would take Mr Llewellyn and the company out of the market (transport of potatoes) for good. If the disqualification could be set aside and the company permitted to apply for a new licence (such an application would probably take several months to process) some of the lost contracts could perhaps be won back.
7. Roger Llewellyn told me that he felt that he had been “a bit harshly dealt with”. He would like another chance to prove himself.
8. At this point I adjourned the inquiry in order to consider and issue a written decision.

Consideration

9. In considering whether disqualification orders against Roger Llewellyn Ltd and Roger are appropriate and, if so, what the length of such orders might be, I have borne in mind the following:

- i) although in some circumstances licences are revoked without disqualification orders being made, this tends to be where the licence is revoked on technical grounds (eg there has been a change of entity, or the operator's financial standing has changed following, for instance, the collapse of a major debtor) and there is no other major non-compliance by the operator. Where there has been major non-compliance (as with Roger Llewellyn Ltd), the bias is normally in favour of a period of disqualification because otherwise the operator could apply for another licence immediately and be back on the road with little more disadvantage in reality than a short suspension. As the Upper Tribunal remarked in paragraph 19 of its decision on the company's and Roger Llewellyn's appeal, "it would be an affront to other compliant and law-abiding operators if, in such a case as this, an order of disqualification was not made."
- ii) in view of the sheer range and seriousness of non-compliance found with Roger Llewellyn Ltd over an extended period of time, and in view of the dishonesty found (for example in the use of a "flag of convenience" transport manager with an international CPC qualification to enable the company to carry out overseas journeys when in reality that transport manager had no involvement with the business) I consider that disqualification orders are fully justified in this case;
- iii) it is therefore a question, as the Upper Tribunal pointed out at the end of paragraph 19 of its decision, of the length of the disqualification. In deciding on the appropriate length, I have had regard to paragraph 100 of the Senior Traffic Commissioner's Statutory Guidance Document No 10 "The principles of decision making and the concept of proportionality". This states that while "each case must be looked at on its merits, traffic commissioners may wish to use as a starting point for a first public inquiry consideration of a disqualification period of between 1 and 3 years. Serious cases, where, for example, the operator deliberately puts life at risk and/or knowingly operates unsafe vehicles **or allows drivers to falsify records** [my emphasis], may merit disqualification of between 5 to 10 years or in certain cases for an indefinite period." As Ms Newbold pointed out, this was Roger Llewellyn Ltd's first public inquiry. So I take as a starting point the one to three year range suggested by the STC. In my view, the conduct of the operator suggests that an outcome at the higher end of the scale is appropriate, for the following reasons:
 - a) the serious and long-lasting dishonesty in running a standard international licence under the aegis of an internationally qualified CPC holder who in reality was not involved in any way;
 - b) the operator's failure to notice over a 17 month period that one of its vehicles was fitted with an illegal AdBlue emulator;
 - c) the use of an unauthorised operating centre for ten years;
 - d) the operator's failure to analyse digital tachograph records for a six year period until DVSA's investigation;
 - e) the director's own involvement in falsifying tachograph records by driving without a card on four occasions;

- f) the director's failure to get a personal grip of remedying the shortcomings in the wake of DVSA's investigation.
- iv) Ms Newbold drew attention to the positive factors – the measures taken by the company in advance of the inquiry (and some even in advance of the DVSA investigation) to remedy shortcomings. There were indeed positive factors: I listed seven in paragraph 19 of my decision of 8 July 2019. However, three of these factors were tinged with negative issues: for example although consultant David Parry had been brought in and a new transport manager engaged, there were still shortcomings in that a vehicle had been operated without an MOT, driver defect reports were in a poor state and significant drivers hours infringements and missing mileage were still occurring. I am also mindful of the STC's guidance suggesting a starting point of between five and ten years' disqualification where operators have encouraged drivers to falsify records. Roger Llewellyn's own behaviour – falsifying his own records and failing to deal with another driver who was acting in a similar way – raises the question of whether he should be considered in this more serious category. In the end I decided that the falsification did not appear to be widespread or systematic enough to warrant a disqualification in the five to ten year range, but it is somewhat of a counterweight to the positive factors which might otherwise have pulled the disqualification period down from the higher end of the one to three year scale suggested for an operator's first public inquiry. The fact that some of the positive factors are not quite as positive as they seem (the negative tinges described above) also mean that the strength of their counterweight is reduced.
- v) I have also taken into consideration the convictions incurred by Roger Llewellyn for making false records. His three six month prison sentences (albeit suspended) are due to be completed on 23 February 2020. They will become spent two years after that date, ie on 23 February 2022. The Goods Vehicles (Licensing of Operators) Act 1995 makes clear (in paragraph 2 of Schedule 3) that a traffic commissioner must determine that an individual is not of good repute if he has more than one conviction for a serious offence or if he has been convicted for "road transport offences". A "serious offence" is defined as an offence where a term of more than three months' imprisonment has been imposed. Mr Llewellyn has therefore been convicted of three "serious offences". A "road transport offence" is defined as including "in particular, an offence relating to drivers' hours of work or rest periods." Roger Llewellyn has been convicted of 12 such offences. Roger Llewellyn, therefore, is not of good repute and could not be considered as a potential operator licence holder or transport manager until 23 February 2022 at the earliest, when these offences become spent, even if he otherwise had a wholly compliant record (which of course he does not).
- vi) against this background, I consider that a disqualification period at the upper end of the one to three year scale suggested by the STC is wholly appropriate and proportionate;
- vii) I am imposing the disqualification orders on both Roger Llewellyn Ltd and Roger Llewellyn. According to Companies House records, Roger Llewellyn is the sole director and 100% shareholder of the company. The company and Roger Llewellyn are therefore in practical terms indistinguishable and it is appropriate that the disqualification orders apply to both.
10. In deciding on the precise length of the disqualification orders I have taken into account the fact that, although the Upper Tribunal quashed the previous orders in October 2019 and ordered the matter to be re-heard, the company and Roger Llewellyn in practice

would not have been able to regain a licence in the meantime and have in effect been unable to re-enter the industry since the licence was revoked on 10 August 2019. I am therefore reflecting this *de facto* disqualification period already served by imposing a reduced disqualification period - coming into effect from today's date - of two years, seven months and 26 days, to expire on 10 August 2022. This means that the disqualification period served in practice would be three years, in line with the STC's guidelines and the justification for which is set out above.

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

Nicholas Denton
Traffic Commissioner
15 January 2020