



WEST MIDLANDS TRAFFIC AREA
DECISION OF THE TRAFFIC COMMISSIONER
VIRTUAL PUBLIC INQUIRY HELD ON 29 MAY 2020
OPERATOR: HENRY HERBERT COTTRILL
LICENCE OD0138438

Decision

1. The standard national goods vehicle operator's licence held by Herbert Henry Cottrill is revoked with immediate effect pursuant to Sections 26(1)(e), (f) and (h) and 27(1)(a) and (b) of the Goods Vehicles (Licensing of Operators) Act 1995 ("the 1995 Act").
2. Herbert Henry Cottrill has lost his good repute as an operator and transport manager. Pursuant to Schedule 3 of the 1995 Act, he is disqualified for an indefinite period of time from acting as a transport manager on any licence.

Operator details

1. Herbert Henry Cottrill holds a standard national goods vehicle operator's licence (OD0138438) for one vehicle. There is one vehicle currently in possession. Mr Cottrill is also the nominated transport manager on the licence, holding the qualification by virtue of acquired rights.

DVSA investigation

2. In March 2020 I received a report of DVSA maintenance investigation into the operator which had found that the specified vehicle had failed its MOT every year since 2014. No preventative maintenance inspection reports existed, the operator considering this to be a waste of paper as his son carried out the maintenance. The MOT failures were blamed on an "overzealous tester".

Public inquiry

3. I called the operator to a virtual public inquiry, which was held on 29 May 2020. Henry Herbert Cottrill attended.

4. In the course of the inquiry it became clear that Henry Cottrill had operated for years in partnership with his wife, and more recently in partnership with his wife and son. An application for a licence should have been submitted by the partnership long ago. Mr Cottrill, despite holding a transport manager qualification (through acquired rights) was wholly unaware of this.
5. Mr Cottrill continued to blame MOT testers and the “hassle” they gave him for the MOT failures. His son Jason was a fully qualified mechanic and kept the vehicle in good order. He (Henry Cottrill) regarded the obligation to keep maintenance records as “all about ticking the bloody boxes”. He claimed that the DVSA vehicle examiner had given the vehicle a clean bill of health when he had visited. However, I noted that the VE’s report specifically stated that he had **not** inspected the vehicle.
6. Mr Cottrill stated that the vehicle was used only for recovery work which was exempt from operator licensing. However, he wished to retain the licence because he was planning to bring a tipper into service: this *would* require a licence. I asked Mr Cottrill a simple question about drivers’ hours rules to see how up to date his knowledge was: Mr Cottrill did not know how long a driver could drive before he could take a break and had to be fed the answer by his son.

Findings

7. After considering the evidence, I make the following findings:
 - i) the sole trader Henry Herbert Cottrill is not the operator and has not been for many years. The de facto operator is a partnership between Mr Cottrill and his wife and, more latterly, his son (Section 26(1)(h) of the 1995 Act refers);
 - ii) Mr Cottrill has failed to fulfil his undertakings to keep vehicles fit and serviceable; to keep maintenance records for 15 months; and to ensure drivers reported defects in writing (Section 26(1)(f) refers);
 - iii) Mr Cottrill has no understanding at all of the responsibilities and duties of a modern-day transport manager. He is, rather, dismissive of the requirement to keep written records
 - iv) In the light of Mr Cottrill’s lack of knowledge, which has led to a situation in which the vehicle failed its MOT each year for five years and in which no maintenance records were kept, and given his complete failure to understand the importance of making and keeping such records, I have no option but to find that he is not of good repute (Section 27(1)(b) and Schedule 3, paragraph 1 of the 1995 Act refer). There was nothing to put on the positive side of the balance.

Conclusions

8. The entity holding the licence is not the operator, and so the licence must be revoked. Henry Herbert Cottrill is not of good repute, either as operator or transport manager, and so the licence must also be revoked under Section 27(1)(a) and (b).
9. Having found that Mr Cottrill is not of good repute as a transport manager, I must also disqualify him under Schedule 3 from acting as a transport manager under any licence. The disqualification is indefinite: if Mr Cottrill wishes to act as a transport manager again in the future, he must first pass the modern-day transport manager CPC examination.
10. After the public inquiry, I did receive (today, 1 June) a communication from Mr Cottrill to the effect that he had reflected on matters over the weekend and now wished to

surrender the licence. Had he offered to surrender the licence before the inquiry was held I might have accepted it, but given that an inquiry – with all its attendant trouble and expense – **was** held and in the light of the evidence which emerged during it, I have decided not to accept the surrender but to take the decisions set out above.

Nicholas Denton

Nicholas Denton
Traffic Commissioner
1 June 2020