



SOUTH EASTERN AND METROPOLITAN TRAFFIC AREA

DECISION OF THE DEPUTY TRAFFIC COMMISSIONER

**PUBLIC INQUIRY HEARD AT IVY HOUSE, IVY TERRACE, EASTBOURNE ON
23 July 2020**

OK1052594 ELLIOTT ENVIRONMENTAL LIMITED

Decision

Breaches of Section 26(1) (c) and (f)) of the Goods Vehicles (Licensing of Operators) Act 1995 found

Repute as an operator severely tarnished and order made for a permanent curtailment of authorised vehicles to two ordered with effect from 00.01 hours on the 17 August 2020.

Direction made under Section 26 (6) of the Goods Vehicles (Licensing of Operators) Act 1995 that the vehicles removed as a consequence of the curtailment may not be used by or specified on another operator's licence for a period of six months i.e. until the 17 February 2021.

Repute of Stuart Neil Hendrick as transport manager severely tarnished.

Background

- 1. The operator Elliott Environmental Limited is the holder of a standard national licence authorising five vehicles granted on the 17 December 2005. The sole director of the company is Stuart Hendrick who is also the transport manager. There is an extensive record of previous regulatory action in relation to this operator, this being the ninth occasion when a referral to the Traffic Commissioner was justified. Previous actions have included a series of warnings, curtailment, and suspension of the licence.**
- 2. On the 1 October 2019 authorised vehicle KX05PZG was checked and issued with an "S marked" prohibition notice in relation to a loose wheel nut and under inflated tyre. As a result of the prohibition being issued and**

the previous history, Vehicle Examiner Hierons conducted a maintenance investigation on the 15 October 2019 – the outcome of this investigation was deemed to be unsatisfactory.

3. The reasons for the unsatisfactory marking were the prohibition issued on the 1 October 2019, two further prohibitions issued on the 8 April 2016 and 17 June 2019 (both of these included tyre related defects), the absence of PMI records for one vehicle, the absence of an effective disciplinary system, incomplete driver defect reporting records and a lack of recent update training for Mr Hendrick in his role as transport manager.

The Public Inquiry

4. Mr Hendrick attended the public inquiry represented by counsel, Ms Emir and Vehicle Examiner Hierons gave evidence via a video link.
5. Vehicle Examiner Hierons gave evidence and confirmed the contents of his report. He also stated that two additional prohibitions had been issued since he wrote his report, one on the 27 November 2019 for direction indicator and rear lamp faults and another on the 19 May 2020 for under inflated tyres.
6. Mr Hierons said that he had been sent PMI sheets for 5 vehicles and some driver defect reports. The specified period between inspections was 6 weeks and he noted that this had been exceeded and gaps of up to 16 weeks had occurred. I confirmed with him, however that this was during the period of the Covid emergency when a tolerance had been allowed in this regard.
7. At my request Mr Hierons read through the detail recorded on each of the inspection sheets and confirmed that there were a significant number of occasions when driver detectable faults were being found and repaired. These included tyres, lights, and lack of windscreen wash. There did not appear to driver defect sheets that corresponded with these faults.
8. In answer to Ms Emir, Mr Hierons agreed that some drivers' records were being completed, that Mr Hendrick had completed update training as a transport manager in 2017 and 2019, that there now appeared to have been a disciplinary process in place and the MOT pass rate for the authorised vehicles was good. Mr Hendrick was co-operative and seemed to be trying, the defects being found may have been a result of the terrain that the vehicles had to run on, and the defects found at maintenance inspections could have happened on the same day or on the day before the inspection. .

9. Mr Hendrick gave evidence and said that the “missing” PMI sheets had related to a vehicle that had been sold and they had now been forwarded. All the vehicles had to work on building and waste disposal sites where the terrain was mainly hardcore/rubble and the drivers were not permitted to inspect their vehicles before going back onto the highway.
10. Mr Hendrick could not recall being asked by Mr Hierons about the disciplinary process and would have shown him warning letters if he had been asked to do so. It was a “never ending task” to remind the driver of the need to check their vehicles and a lot of his problems came down to complacency on their part. He did his own checks when the vehicles returned to the operating centre at the end of each day. He said that his vehicles were stopped more because of the history and this led to more problems being found. Enquiries revealed that since the 22 July 2019 there had been eight encounters by the DVSA and of these five were clear and three resulted in prohibitions.

Findings and Decision

11. In this case there have been breaches of Section 26(1) and (f) of the Goods Vehicles (Licensing of Operators) Act, 1995. I find that the central issue in this case is the lack of effectiveness of the drivers’ walk round checks. There is no doubt in my mind that this has led to the high number of driver detectable faults showing up at the maintenance inspections and to a lesser extent the prohibitions being issued. Whilst I accept there is some merit in the argument concerning the terrain the vehicles travel on and lack of opportunity to inspect on site, I do not believe this is the key reason why these defects keep being found on inspection. Whether Mr Hendrick lacks the necessary assertiveness to deal with the drivers effectively or he forgets the importance of doing so is not for me to determine. The upshot of the failure is the repeat problem of not meeting the required standards for compliance.
12. I do not place significant weight on the other points found during the maintenance investigation which have now been explained. However, all the negative factors have to be put in the context of this being the ninth regulatory intervention since the licence was granted. I believe to most members of the public and other operators it would appear extraordinary that so many chances for improvement have already been given.
13. In deciding what action to take on these negative findings I need to balance any positive elements of the case. Mr Hendrick has completed further training and I give credit for this and for the good record on MOT passes.
14. Having considered all of the factors detailed above I have asked myself the question set out in the case of Priority Freight Limited & Paul Williams

i.e. how likely is it that this operator will operate in compliance with the operator's licensing regime? In other words, can the operator be trusted going forward? I have decided that I cannot be confident that standards will be met to the level required if the licence is to continue in its' current form. So many chances have been given and sufficient improvement has not been made.

15. My decision therefore is to find that the reputé of the operator is severely tarnished and to curtail the licence permanently to two authorised vehicles. I do so with effect from the 00.01 hours on the 17 August 2020 to allow a short time for Mr Hendrick to remodel his business. I realise that curtailment will impact adversely on the business but nevertheless believe this to be a proportionate and justified action. Mr Hendrick should be aware of how close he has come to revocation of the licence and understand this is his opportunity to improve the compliance levels with a reduced fleet. If over time he can demonstrate continuing compliance at the level required, he may be able to obtain an increase in authorisation. The operator should notify the Office of the Traffic Commissioner of the details of the vehicles to be removed from the licence within 14 days of receipt of this decision.
16. I am mindful that Mr Hendrick is the holder of a sole trader licence which authorises five vehicles with two in possession and I am anxious to avoid Mr Hendrick simply transferring the curtailed vehicles to this licence. I therefore direct under Section 26(6) of the Goods Vehicles (Licensing of Operators) Act, 1995 that the vehicles removed from this licence may not be used or specified on an operator's licence. Any such direction must be time limited and I make the order for a period of six months from the date of curtailment i.e. until the 17 February 2021. If the vehicles are sold during this period and I am shown evidence of this I will be prepared to lift the direction – the aim of the direction is to prevent transfer to the sole trader licence as explained.
17. Mr Hendrick is the transport manager and I also find that his reputé in this regard is severely tarnished. Finally I make a direction that a desk based assessment of this operator and Mr Hendrick's sole trader licence OK1064778 is carried out by the DVSA in six months having particular regard to the preventative maintenance inspections and effectiveness of the drivers' daily walk round checks. If significant problems are identified I anticipate that the operator will be brought back to a further inquiry.



John Baker
Deputy Traffic Commissioner

27 July 2020

