



## WEST MIDLANDS TRAFFIC AREA

### DECISION OF THE TRAFFIC COMMISSIONER

PUBLIC INQUIRY HELD IN BIRMINGHAM ON 7 JULY 2020

OPERATOR: DANIEL GRUNDY T/A DG SKIPS

LICENCE OD1127035

#### **Decision**

1. The standard national goods vehicle operator's licence held by Daniel Grundy is revoked with effect from 0001 hours on 17 August 2020 pursuant to Sections 26(1)(c)(iii), (e), and (f) and 27(1)(a) of the Goods Vehicles (Licensing of Operators) Act 1995 ("the 1995 Act").
2. Daniel Grundy has lost his good repute as a transport manager, pursuant to schedule 3 paragraph 1 of the 1995 Act. Under paragraph 16(2) of that schedule, he is disqualified, for a period of three years from 17 August 2020 until 17 August 2023, from acting as a transport manager on any operator's licence.

#### **Background**

##### *Operator details*

1. Daniel Grundy t/a DG Skips holds a standard national goods vehicle operator's licence (OD1127035) for two vehicles: the licence was granted in July 2014. There is one vehicle currently in possession. Daniel Grundy is also the nominated transport manager on the licence. The stated interval between safety inspections is six weeks.

##### *DVSA Investigation*

2. On 30 September 2019 a vehicle operated by Daniel Grundy, LT08 UWM, was stopped by DVSA. The vehicle's MOT had expired 13 months previously, on 31 August 2018. The vehicle was being driven without a tachograph card by a driver Mark Rowley who only had provisional category B entitlement and lacked any sort of entitlement to drive HGVs. He was thus driving without insurance. The vehicle was not displaying a licence disc and there was no margin for its use. The vehicle was still under a prohibition issued in 2018 for a defective tachograph. DVSA issued a roadworthiness prohibition for a tread depth on one tyre of only 0.15mm, all the stop lights being inoperative and an obviously insecure driver's step.

3. DVSA vehicle examiner David Winn visited the operator on 16 October 2019 and found the following shortcomings:
  - i) no safety inspection records could be produced;
  - ii) no driver defect reports could be produced prior to 30 September 2019, although a driver defect book had been introduced since then;
  - iii) the operator's MOT pass rate over the past two years was only 40%;
4. DVSA traffic examiner Anita Barwell accompanied VE Winn on the visit to the operator on 16 October. She found that "there was no form of control" in relation to drivers' hours. Although Mr Grundy had acquired vehicle LT08 UWM in April 2018, he had not acquired any of the equipment necessary to download data from driver cards and the vehicle unit.

### **Public inquiry**

5. Concerned by this report, I called Daniel Grundy to a public inquiry. The inquiry was delayed because of the COVID-19 crisis but was eventually held in Birmingham on 7 July 2020. Present were DVSA examiners David Winn and Anita Barwell, operator and transport manager Daniel Grundy and barrister Dominic Bright, representing him.
6. Giving evidence, Daniel Grundy made the following points:
  - i) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx in April 2019 had affected him badly and caused him to lose sight of his business;
  - ii) Mark Rowley was not employed as a driver. He had not been authorised to take vehicles out, although Mr Grundy accepted that his control of the vehicle and keys had been lax;
  - iii) he had acquired the vehicle in April 2018 but had not known that it was under prohibition. The prohibition had been issued to the previous owner;
  - iv) although he had failed to specify LT08 UWM when he acquired it, he had not used more than two vehicles at once. He had failed to de-specify one of his existing vehicles from the licence;
  - v) since September 2019 the vehicle had had six week inspections, roller brake tests, and driver defect reports had been correctly completed (records were provided);
  - vi) he had known that the vehicle was out of MOT and that the driver step was defective, but his poor state of mental health at the time meant that he had failed to take the necessary action;
  - vii) he had not been familiar with digital tachographs when he acquired vehicle LT08 UWM in April 2018. He had stuck his head in the sand rather than educate himself on how to use them;
  - viii) since September 2019 he had joined the RHA. The RHA was now analysing tachograph data for him monthly;
  - ix) a proper maintenance contract and wall planner had been put in place in November 2019;

- x) he had attended a two day transport manager CPC refresher training course in November 2019 (evidence provided).
7. On behalf of Mr Grundy, Mr Bright made the following points:
- i) reputations should be considered as of today, ie taking into account Mr Grundy's considerable improvement in compliance since September 2019;
  - ii) both vehicle and traffic examiner had emphasised that Mr Grundy had co-operated with their inquiries, had been open and honest with them and had not tried to conceal his failures to comply;
  - iii) the fact that Mr Grundy had not incurred any convictions or fixed penalties was a positive point;
  - iv) Mr Grundy had attended a two-day transport manager CPC refresher course in November 2019, soon after the DVSA's visit;
8. Mr Bright also reminded me of Mr Grundy's application to downgrade the licence to restricted, as a standard national licence was not required for the type of work (skips) Mr Grundy was now doing. Mr Bright believed that Mr Grundy's conduct since September 2019 showed that he could be trusted to comply in the future and that he did not deserve to be put out of business. If I was not with him on this and decided to revoke the licence, he asked for sufficient time to be given to allow Mr Grundy to collect his skips.
9. I noted that, although Mr Grundy had stated during the inquiry that tachograph cards and vehicle unit were now being downloaded every month, the tachograph evidence supplied was not sufficient to show this, as it consisted of a driver and vehicle report each covering the entire period 1 June 2019 to 30 June 2020. Could Mr Grundy demonstrate that, since late 2019 at least, he had been carrying out monthly downloads? Mr Grundy said that he could, and I gave him until close of business the following day (8 July) to provide this evidence.
10. Mr Grundy responded as promised the following day. However, the evidence provided did not fully support his claim to have been performing monthly downloads. It showed that his driver card had been downloaded first on 11 November 2019, followed by further downloads on 18 December 2019, 9 January 2020, 4 February, 3 March, 15 April, 12 May and 11 and 29 June 2020. I noted that the 28 day maximum period between downloads had been exceeded three times: between 11 November and 18 December 2019, between 3 March and 15 April 2020, and between 12 May and 11 June 2020 (just). The vehicle unit had been downloaded for the first time on 9 January 2020, followed by a further download on 4 February 2020 and possibly a download on 13 May 2020 (evidence was inconclusive). Giving Mr Grundy the benefit of the doubt and assuming there was a vehicle unit download on 13 May, that would still have exceeded the maximum 90 day interval since the previous VU download on 4 February. Further (and Mr Grundy to do him justice pointed this out), although the data had been downloaded on the above dates, it had much less frequently been uploaded to the RHA analysis service. Data was uploaded for analysis on only three dates: 9 January, 13 May and 30 June 2020. On the plus side, when data was finally analysed, few infringements were shown.
11. In his covering email, Mr Grundy stated that he had been unaware that he had been doing things incorrectly. He understood that this would "not bode well" for him when I came to make my decision. He realised that he needed further training and had thus

booked himself on another two-day transport manager CPC refresher with the RHA on 9 and 10 July and a day's operator licence management training with the RHA on 15 July.

## Findings

12. After considering the evidence, I make the following findings:

- i) Mr Grundy has failed to fulfil his promise, made on application, that vehicles would be given a safety inspection every six weeks (Section 26(1)(e) of the 1995 Act refers). Until October 2019 no safety inspection reports could be produced;
- ii) Mr Grundy has failed to fulfil his undertaking to ensure the lawful operation and driving of vehicles (Section 26(1)(f) refers). A vehicle was knowingly used without an MOT for 13 months; the operator permitted a vehicle to be driven by a driver who had only a provisional category B licence. I was not persuaded by Mr Grundy's claim that he was wholly ignorant of the fact that Mr Rowley was driving his 18 tonne vehicle. For one thing, he must have noticed that the vehicle's fuel gauge and odometer readings were not consistent with driving by Mr Grundy alone. There must also have been changes in vehicle condition between drives by Mr Grundy. The very fact that the vehicle keys were kept unguarded at the operating centre must surely have created an awareness in Mr Grundy's mind that the vehicle could easily be driven by someone else. If Mr Grundy did not have conscious knowledge that the vehicle was being driven by Mr Rowley, I find that he certainly had the next degree of knowledge in that he negligently and recklessly turned a blind eye to the obvious;
- iii) Mr Grundy has failed to fulfil his undertaking to keep his vehicles fit and serviceable. The vehicle was prohibited after being seen on the road with obvious safety defects: a broken step, no stop lights functioning and a practically bald tyre. The MOT pass rate at 40% is very poor;
- iv) Mr Grundy has failed to fulfil his undertaking to ensure that drivers reported vehicle defects in writing. No driver defect reports were completed before 1 October 2019;
- v) Mr Grundy has failed to fulfil his undertaking to ensure that the rules on drivers hours and tachographs would be observed. There was no attempt to download or analyse tachograph data from the digital vehicle, acquired in April 2018, until January 2020. Even since that date, downloads have not been performed at the required intervals and data has not been analysed with the required frequency;
- vi) although Mr Grundy acquired vehicle LT08 UWM in April 2018, he did not specify it on his licence until October 2019, contrary to Section 5(6) of the 1995 Act;
- vii) Mr Grundy did not knowingly operate a vehicle which was under a prohibition. I accept his explanation that the prohibition was imposed when the vehicle was on the licence of another operator and that this operator neglected to inform him of this when he purchased it from them;
- viii) Mr Grundy has failed to exercise the required continuous and effective management of the transport side of the business. Until October 2019, as is clear from the above findings, he was utterly negligent of his transport manager duties and responsibilities (Section 27(1)(a) refers).



Having concluded that he has lost his repute, I must therefore disqualify him under Schedule 3 to the 1995 Act. In view of the wide-ranging nature, the seriousness and the long-lasting nature of the non-compliance on his watch, I am making a disqualification order for three years.

*Disqualification - operator*

20. Normally I would make an equally lengthy disqualification order against an operator with Mr Grundy's record. But I acknowledge that he has made genuine and strenuous efforts to improve compliance since October 2019 (even if there remains some way to go). Exceptionally, I have decided not to make a disqualification order in his case. But if he wishes to apply for a licence in the future, I would expect him to have undertaken specific training on how to administer digital tachographs (not just a general CPC refresher course which does not generally get into the detail of how to download or upload using specific software). I would also envisage there being a gap of at least two months between the revocation of the current licence and the grant of any future application – otherwise the effect of this decision would only be equivalent to a short suspension.

**Decisions**

*Operator licence*

21. The licence is revoked under Section 26(1)(c)(iii), (e) and (f) and 27(1)(a) of the 1995 Act. The revocation will come into effect on 17 August 2020, to allow Mr Grundy time to collect the skips which are out at customers' premises.

*Disqualification orders*

22. A disqualification order of three years as transport manager is made, as detailed at the head of this decision.



Nicholas Denton  
Traffic Commissioner  
15 July 2020