



MR SKIP BARKING LIMITED (OK1107482)

GOODS VEHICLES (LICENSING OF OPERATORS) ACT 1995

TRAFFIC COMMISSIONER'S WRITTEN DECISION

Decision

1. Pursuant to adverse findings under Section 26(1)(c)(iii), (ca), (e), (f) and (h) of the Goods Vehicle (Licensing of Operators) Act 1995, the Operator no longer meets the requirement of Section 13B of the 1995 Act – not to be unfit to hold an Operator Licence. Accordingly, Licence OK1107482 is revoked with effect from 23:45 on the 31 August 2020.
2. The sole Director Mr Mohamed Reguig and Mr Skip Barking Limited are disqualified from holding or obtaining an Operator Licence or being involved in the management, administration or control of any entity that holds or obtains an Operators Licence in Great Britain for 3 years with effect from 23:45 on the 31 August 2020, as provided by Section 28 of the 1995 Act.

Background

3. Mr Skip Barking Limited holds a Restricted Operator Licence authorising use of 3 vehicles from an Operating Centre in Romford. The Operator has an extensive compliance history which is set out in detail in the Public Inquiry case papers. In short, it was issued with a warning letter in relation to its maintenance in 2013. It attended a Public Inquiry in 2016 for breaching the Licence undertakings in relation to maintenance, driver hours and tachographs. In 2013 the Licence was suspended for 28 days with undertakings added by way future compliance assurances. That included the director attending an Operator Licence Awareness course. In 2018, a further warning was issued after another unsatisfactory maintenance investigation.
4. The follow up DVSA Desk Based Assessment in 2019 (Vehicle Examiner and Traffic Examiner) set out detailed deficiencies that remained in its systems. An 'in person' maintenance investigation was carried out on 10 and 12 March 2020 by a Vehicle Examiner because of a S-Marked prohibition (indicating ongoing failings in terms of maintenance). Accordingly, I determined that the Operator should be called to a Public Inquiry.

The Hearing

5. The Public Inquiry commenced and concluded at the Public Inquiry room in Eastbourne on 12 August 2020. Mr Reguig attended and gave oral evidence. The Operator was represented by Mr Paul Mason Solicitor. The Vehicle Examiner Mr Perry Mitchell attended via Microsoft Teams and gave oral evidence. At the conclusion of the hearing I indicated that I would issue a written decision within 7 days.

Evidence

6. Prior to considering this written decision I have reviewed the following:
 - I. The Public Inquiry bundle of documents
 - II. The updated reports from the Vehicle Examiner and Traffic Examiner lodged immediately prior to the inquiry
 - III. The documents lodged by Mr Mason on behalf of the Operator on 11 August 2020
 - IV. My contemporaneous handwritten notes
 - V. *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;
 - VI. Upper Tribunal Decisions and other guidance I consider relevant to this determination as listed elsewhere in this Decision;
 - VII. The Senior Traffic Commissioner's Statutory Guidance and Statutory Directions current versions.
7. I have not set out all the evidence in this decision because it is a matter of record within the bundle and available transcript. However, I do refer to it in terms of my material findings and conclusions.

The Issues

8. From the outset the Operator did not challenge any of the Vehicle Examiner or Traffic Examiner evidence within the bundle or their addendum updated reports for the hearing. During his oral evidence Mr Reguig said that he would never drive without a card but did not provide any evidence of who else may be driving at that time. During preliminary discussions, I made a formal finding, which was not resisted, that the Operator failed to cooperate with the Public Inquiry. The Operator failed to lodge all the evidence with the Examiners or my office on time and it remained incomplete as at the date of the hearing. .
9. Mr Mason on behalf of the Operator acknowledged that the starting point for the case in terms of the Senior Traffic Commissioners Statutory Guidance and Statutory Directions No 10 Annex 4 is SEVERE/SERIOUS. It falls for me to determine what action, if any, to take in relation to this Licence.

Consideration and Findings

Approach

10. There is clear and consistent case law from the Upper Tribunal that a Traffic Commissioner is entitled to treat the conduct of the Sole Director effectively as the conduct of the Limited Company and repute or fitness is determined accordingly. Such an approach has received approval from the appellate tribunal on a number of occasions, such as *2013/008 Vision Travel International Limited* and *T2013/61 Alan Michael Knight*.

11. At paragraphs 10 to 13 of the decision in NT/2013/82 Arnold Transport & Sons Ltd v DOENI ([2014] UKUT 162 (AAC)), the Upper Tribunal set out the following general principles in the operation of the legislative provisions in Great Britain and Northern Ireland:

'Some General Principles

(a) An operator's licence can only be granted if the applicant satisfies the Department that the relevant requirements, set out in s. 12 of the 2010 Act as amended, have been met. [The expression Department is used in the legislation but for the purposes of the decisions required to be taken under the legislation it is the Head of the TRU who takes them]. The relevant requirements are now set out in Paragraph 17(5) of the Goods Vehicles (Qualifications of Operators) Regulations (Northern Ireland) 2012, ("the Qualifications Regulations), which substitutes a new s.12 and adds ss. 12A-12E to the 2010 Act. The Qualifications Regulations also contain important provisions in relation to Good Repute, Professional Competence and Transport Managers.

(b) ...

(c) The Tribunal has stated on many occasions that operator's licensing is based on trust. Since it is impossible to police every operator and every vehicle at all times the Department in Northern Ireland, (and Traffic Commissioners in GB), must feel able to trust operators to comply with all relevant parts of the operator's licensing regime. In addition other operators must be able to trust their competitors to comply, otherwise they will no longer compete on a level playing field. In our view this reflects the general public interest in ensuring that Heavy Goods Vehicles are properly maintained and safely driven. Unfair competition is against the public interest because it encourages operators to cut corners in order to remain in business. Cutting corners all too easily leads to compromising safe operation.

(d) 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.

Analysis

12. The Operator admitted that:

- i. Some of the records and evidence required to be sent to the Examiners 14 day before the hearing was late and remained incomplete.
- ii. Mr Reguig did not bring his Public Inquiry papers to the hearing. Mr Reguig had left his bundle with a Transport Consultant some weeks previously.
- iii. There is limited evidence that Mr Reguig is managing the transport operations.

- iv. Numerous adverse findings from the 2016 Public Inquiry remain as issues in 2019 and 2020. For example, prohibitions, Preventative Maintenance Inspection intervals exceeded and an inadequate driver defect reporting system.
 - v. Promises made at the 2016 Public Inquiry have not followed through. By way of example, as at March 2020 the undertaking for quarterly roller brake testing with the results to be recorded on the PMI sheet was in fact at best 6 monthly and not always recorded on the PMI.
13. Mr Reguig confirmed he had no explanation for the failings and did not seek to make excuses. Even after 2016 Public Inquiry he continued to rely on the expertise of others without supervising them. Mr Reguig spent his days driving, trusting other to do their jobs. This is never acceptable, see for example 2014/024 LA & Z Leonida t/a ETS. This approach continued even after the 2019 DVSA Desk Based Assessment. Both Examiners were credible and fair and their allegations were evidence based. Mr Reguig did not provide any contrary evidence in relation to the driving off card and missing mileage. On this limited aspect that remained in issue, I prefer the Traffic Examiner evidence. The cumulative impact of the evidence is that the Operator poses an ongoing significant risk to road safety.
14. There are several aggravating features:
- i. In 2019 Mr Reguig failed to produce all records to DVSA.
 - ii. In March 2020 he failed produce all records to DVSA
 - iii. In July / August 2020 Mr Reguig failed to produce all records and evidence to DVSA and my office.
 - iv. Mr Reguig driving without a card inserted in 2019
 - v. A pattern of Mr Reguig removing his driver card and continuing to travel without his driver card in 2019.
 - vi. The anomaly on 20 July 2019 of a worksheet stating Mr Reguig as the driver, but the driver card of Mr Gary Copley inserted in the tachograph. Mr Reguig was due to be on weekly rest. Mr Reguig produced no evidence to demonstrate what he was doing that day if not driving.
 - vii. Most of the brake testing in 2020 has been unladen decelerometer test only.
 - viii. Preventative Maintenance Inspection sheet dated 11 March 2020 for vehicle SF08FPG - several defects with no evidence of repair and certificate of roadworthiness not signed off. There was a subsequent MOT passed for a PG9 clearance but that irrelevant. The audit is inadequate because an MOT pass is not indicative of an effective Preventative Maintenance Inspection. A certificate of roadworthiness is signing off to say that the vehicle will remain above the MOT standard until it has the next regular safety inspection, where as an MOT is a snapshot of basic compliance.
15. As per STC Statutory Document No. 1 on Good Repute and fitness (para 49), a failure to supply records that a traffic commissioner has reasonably requested is likely to result in adverse findings against repute or general fitness (2015/040 Tacsí Gwynedd Ltd). Also there is the following authority: *"In the absence of complete records to enable cross referencing, it is challenging assessment of current compliance and safety. This is a serious matter"*, as per 2019/11 V Larkin Ltd t/a Olympic Scaffolding on Point Construction Ltd, Vincent Larkin. The principles are apposite whether the documents and data are required by DVSA under a s.99 production letter or a Traffic Commissioner.

16. The positives put forward on the Operator behalf are:

- i. It purchased a newer vehicle and reduced the fleet to 1 vehicle.
 - ii. A clear roadside encounter on a limited site check (Covid 19).
 - iii. A prohibition clearance MOT pass.
 - iv. Mr Reguig's daughter will sit Transport Manager CPC exam.
 - v. It has engaged another Transport Consultant.
17. Mr Reguig accepts that this may be too little to late but asks me to give him one 'last chance' as he will effectively be driving the only vehicle. I can only give limited weight to the positives. Mr Reguig has been the only driver for a while but failed to produce all relevant data to the Traffic Examiner which means I cannot properly assess current performance. Third party assistance has proved of little help to date. Further Mr Reguig's daughter has been involved in the business during the significant periods of non-compliance. Indeed, she did the response to the DVSA examiner after the March 2020 maintenance investigation.
18. For too long, there has been a significant and serious failure to manage any aspect of its transport operation that goes to the heart of road and public safety, and fair competition within a highly competitive industry. Instead of performing his management duties Mr Reguig has been driving. Not having to employ another driver means he has gained an obvious and unacceptable commercial advantage. Mr Reguig has demonstrated since 2015 that he is incapable as a director, manager, or supervisor. He has acted in a way inconsistent even as a professional driver, not only in terms of drivers' hours but also his driver walk round checks. As there is incomplete data even in August 2020, I cannot be satisfied that he is even capable of operating one vehicle safely. In any event, the history to date provides compelling evidence to the contrary.
19. The evidence overwhelmingly supports a conclusion that I cannot trust the Operator and Mr Reguig moving forward. There is a 5-year history of serious failings, with a previous Public Inquiry and warnings. It is appropriate and proportionate to put him out of business to protect other road users and the legitimate hard working competitors. The time has come to draw the line, as per T/2011/31 Barry Flowerdew trading as Auto Village Limited. Accordingly, early revocation is inevitable and I have reached the decision set out in paragraph 1.

Disqualification

20. *"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"* (2010/29 David Finch Haulage).
21. In my judgement the aggravating features set out in 13 above, including offences of dishonesty, and the ongoing breach of trust over a period of years are such that a period of disqualification is a proportionate approach. I have regard to the STC Statutory Document No. 10 at para 100 which states: *Taking account of the guidance from the Upper Tribunal that 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. This is a second Public Inquiry with recurring themes. Accordingly, I determine that a period of disqualification of 3 years is fair as per paragraph 2 above.

Addendum

22. Mr Reguig's oral evidence was such that his operation required a Standard National Licence – there is no primary occupation to which the vehicles are ancillary. If he applies in the future, then this should be considered.

A handwritten signature in cursive script that reads "Sarah Bell".

Miss Sarah Bell
Traffic Commissioner
19 August 2020