



WEST MIDLANDS TRAFFIC AREA
DECISION OF THE TRAFFIC COMMISSIONER
PUBLIC INQUIRY HELD IN BIRMINGHAM ON 26 APRIL 2017
OPERATOR: MIDLAND POLING SERVICES LTD
LICENCE OD1058560

Decision

1. The restricted goods vehicle operator's licence OD1058560 held by Midland Poling Services Ltd is revoked with effect from 0001 hours on 13 May 2017, pursuant to Sections 26(1)(c)(iii) and (f) of the Goods Vehicles (Licensing of Operators) Act 1995 ("the 1995 Act").
2. Company director Gavin Morris Bentley is disqualified for eight years, from 0001 hours on 13 May 2017 until 0001 hours on 13 May 2025, from holding or obtaining any type of operator's licence in any traffic area and from being the director of any company holding or obtaining such a licence, pursuant to Section 28 (1), (4) and (5) of the 1995 Act.

Background

Operator details

1. Midland Poling Services Ltd holds a restricted goods vehicle operator's licence (OD1058560) for five vehicles. On the date of the public inquiry (26 April 2017) there were three vehicles specified on the licence although the company was operating only one (unspecified) vehicle. The licence was granted in June 2006. The authorised operating centre is at Lower Drayton Farm, Penkridge, Stafford ST19 5RE. The sole director of the company is Gavin Bentley.

Previous compliance history

2. After the company had incurred six roadworthiness prohibitions between December 2006 and August 2008, it was called to a public inquiry in December 2008. The then traffic commissioner curtailed the licence from five vehicles to four for three and a half months and secured the operator's agreement to the following undertakings:

- i) safety inspections will be pre-planned and never more than 6 weeks apart. The PMI reports will be fully and properly completed, show rectifications and be retained for at least 2 years;
 - ii) there will be a nil defect daily driver reporting system. Defect reports will show rectification and all reports will be retained for at least 2 years;
 - iii) the operator will undertake a random audit of at least one driver per week to ensure the drivers are undertaking his/their walk around checks correctly. The findings will be recorded and made available to staff from VOSA or the Office of the Traffic Commissioner on request;
 - iv) maintenance systems, maintenance documentation and vehicle inspections will be audited by Enterprise every 3 months. Audit reports will be prepared, acted upon and retained for at least 2 years. A copy of the report will be forwarded to VOSA at Swynnerton Testing Station within 14 days of its receipt together with the Operator's proposals for implementing its recommendations. If there are three successive clear audits the operator is invited to apply to be released from this undertaking;
 - v) all authorised vehicles will have a thorough and effective pre-MOT inspection. Records to be kept for at least 2 years.
3. The operator was released from the audit undertaking (iv) in July 2011. However, by March 2012 its vehicles had incurred a further five prohibitions since 2008, two of them S-marked, denoting a serious failure in maintenance. Fuel leakages, worn suspension shackle pins and loose U-bolts were among the reasons for the prohibitions. The vehicle prohibition rate stood at 62%, at a time when the national average was 26%. The then traffic commissioner issued a warning in December 2012, after the operator agreed to reinstate the three monthly audits and reduce the safety inspection interval from six to four weeks. These undertakings were added to the licence.
4. Audits were carried out regularly over the next 18 months. Following receipt of a satisfactory audit report dated September 2014, the traffic commissioner again released the company from the audit undertaking. The letter recording this release was dated 4 November 2014: it enclosed an amended licence with the audit undertaking removed but the other specific undertakings (i) to (iii) and (v) above (together with the one relating to safety inspections at the reduced four week interval) were all still clearly present on the licence. Those undertakings were also listed on the licence checklist signed by Gavin Bentley at the five year renewal point on 13 May 2016.

Police and DVSA investigations

5. On 16 February 2017 I received a report dated 27 January 2017 from DVSA vehicle examiner Andrew Smith. Mr Smith had conducted a maintenance investigation into Midland Poling Services Ltd following a serious collision in Falmouth on 2 September 2016 involving one of the operator's vehicles BX02 GNV which had been issued with an S-marked prohibition by the police at the scene. He had attended the operator's premises in Penkrudge on 15 November 2016 and arranged to inspect one of its vehicles at a nearby weighbridge site the next day. He had duly inspected it and issued an S-marked prohibition to vehicle BL02 UYM. Defects identified on the vehicle were:
- i) bolts holding down suspension insecure;

- ii) exhaust pipe insecure and leaking at both front and rear;
 - iii) shock absorber mounting missing;
 - iv) ABS sensor disconnected and ABS warning light on dashboard.
6. On 22 December 2016 Mr Smith met with Midland Poling Services Ltd's director Gavin Bentley. He examined maintenance records. The outcome of his investigation was unsatisfactory, his report noting:
- i) the S-marked prohibition issued to BL02 UYM on 16 November;
 - ii) that safety inspections were being carried out every six weeks rather than at the promised four weeks;
 - iii) that BX02 GNV, which had been involved in the collision on 2 September 2016, had not on that date been given a safety inspection since 4 June, 13 weeks previously;
 - iv) that an out-of-date safety inspection form, missing IM numbers 1 and 58 and with no section to record tyre tread depths or pressures, was being used;
 - v) that there were no readings for brake efficiencies – brake test results were recorded by a simple tick;
 - vi) worn anti-roll bar bushes on BL02 UYM had been reported to the operator on safety inspection sheets dated 18 June, 30 July and 7 September 2016, without any apparent rectification;
 - vii) a driver defect report dated 18 July 2016 relating to BL02 UYM had identified worn brake pads; they were further identified at the safety inspection on 30 July but not replaced until 7 September, 3000 kms later;
7. Mr Smith's report included, as an annex, a report from police vehicle examiner Mark Richards into the operator's vehicle BX02 GNV which had been involved in the collision on 2 September 2016. Mr Richards had attended the collision scene that day. His report noted that the safety catch of the hydraulic support leg of the lorry mounted crane was broken and that the support leg had moved during the journey so that it was protruding at 45 degrees from the vehicle. The protruding leg had collided with a parked van which had in turn been forced into another car. A pedestrian standing between the van and the car had received serious, life-changing, injuries.
8. Mr Richards' detailed examination of the vehicle, performed later that day, found:
- i) that the nearside crane leg safety catch was broken and therefore not performing its function. Corrosion of the fractured metal components indicated that it had been broken for some time and was not a result of the collision;
 - ii) the front bumper was damaged and deformed, with corrosion indicating that this was not recent;
 - iii) the locking mechanisms on the tool locker access doors were defective. One door had been secured by a sharp-pointed U-nail, whose points were protruding from the side of the vehicle. The other door was secured by a piece of electrical wire;

- iv) the electrical wiring and safety control box for the crane at the rear of the vehicle were insecure – the box was swinging from its wires;
- v) the rear marker boards were in a poor condition and not performing their function;
- vi) the rear number plate was severely contaminated by oil and dirt and was unreadable from a reasonable distance;
- vii) the nearside passenger step was missing;
- viii) the nearside driving mirror was insecure – the bottom arm mounting was secured by electrical tape and the top arm was resting on foam placed between the arm and the mounting bracket. The mirror was not in its normal position and thus the view to the rear was heavily restricted;
- ix) the nearside wide angle driving mirror was broken and did not provide any rear view. Mr Richards' opinion was that these defects would have hindered the driver's view of the protruding nearside crane leg;
- x) the exhaust system was leaking;
- xi) the bolts/nuts holding down the suspension were insecure and could be rattled by hand pressure: the axle was likely to move in relation to the suspension unit;
- xii) both front indicators were inoperative;
- xiii) there were several oil leaks from the crane assemblies: two trays had been attached by wire to try to collect the drips but oil was leaking onto the road surface;
- xiv) air was leaking from the brake valve when the foot brake was applied – the leak was clearly audible with the engine running;
- xv) the exhaust brake actuator was insecure, being secured by plastic cable ties and pieces of wire;
- xvi) the ABS light on the dashboard was on, indicating a fault with the ABS system;
- xvii) the windscreen washers were inoperative;
- xviii) a roller brake test conducted by DVSA identified that the offside rear brake effort was 40% less than that of the nearside brake effort;

9. Mr Richards concluded that the condition of the vehicle was the worst that he had examined in many years. The defects he had discovered were a clear indication that any regular maintenance was inadequate and that the driver defect reporting system had failed. In his opinion, the vehicle represented a significant danger both to driver and other road users. The collision and associated serious injury were a result of a failed maintenance system.

Public inquiry

Call to public inquiry

10. I was extremely concerned by these reports and decided to call the operator to a public inquiry. The call-up letter, sent on 22 March 2017, cited Sections 26(1)(c)(iii), (ca), (e) and (f) and 28 of the 1995 Act.

Further information

11. On the morning of the inquiry I was handed some further information from the police. This consisted of a no comment interview given by Mr Bentley on 27 February 2017 and a written statement prepared by Mr Bentley under caution. The statement described the maintenance procedures in place which he regarded as effective. Mr Bentley further stated that BX02 GNV had been on a contract in Cornwall since the middle of June 2016 and that the next scheduled safety inspection on 16 July 2016 had apparently not been carried out as the vehicle had only done about 500 miles since the last inspection. He himself had been working on a new business venture at the time and had delegated vehicle matters to his supervisor Paul O'Toole. The company's internal investigation has found that the driver that day, Paul Ince, had failed to carry out a defect check. Paul O'Toole had checked the crane safety catch the night before the collision and found no defects with it. As far as Mr Bentley was aware any defects reported by drivers to Paul O'Toole were actioned by him immediately.

Holding of public inquiry

12. The inquiry was held in Birmingham on 26 April 2017. Present was company director Gavin Bentley, along with new transport manager Eric George and transport consultant Tony Kirkham. The company was represented by Peter Wilcox QC. Also present were DVSA vehicle examiner Andrew Smith, PC Stephen Dandy from Devon and Cornwall Police and Mark Richards the police vehicle examiner.

Evidence of Gavin Bentley

13. Mr Bentley described his business, which was putting up and replacing telegraph poles for telecommunications companies. He stated that some 25-30 people worked for the company, although their status was technically self-employed. The company was based in the Midlands but had had a short-term contract last summer in Cornwall.
14. Asked how he had implemented the undertakings on the licence Mr Bentley stated that he thought they had all been dropped when the company had been released from the audit undertaking in November 2014. He stated that the central licensing unit in Leeds had agreed in a phone call to drop the undertaking relating to safety inspections every four weeks.
15. Mr Bentley made the following points:
 - i) it had been Paul O'Toole's responsibility to book vehicles in for safety checks and that Mr O'Toole had let him down. He (Mr Bentley) was embarrassed by the condition of vehicle BX02 GNV as revealed by Mr Richards' report;
 - ii) he accepted that the driver defect system had clearly not been working;
 - iii) he had not been carrying out random audits of driver defect reporting because he thought he had been released from that undertaking;
 - iv) he was not a mechanic; he had paid garages to maintain the vehicles and assumed they were doing it correctly;
 - v) he had now introduced a new system whereby if drivers did not produce driver defect reports they did not get paid. He had also brought a transport manager Eric George on board to effect improvements and had employed the services of transport consultant Tony Kirkham;

- vi) he had stopped using the elderly vehicles BX02 GNV and BL02 UYM. He was now using a newer 60 plate vehicle on a repair and maintenance lease from a main dealer. This vehicle was in much better condition. He passed me two recent PMI sheets completed by an Iveco dealer: these had signed the vehicle off as roadworthy
- vii) he had not yet specified this vehicle on his licence because he had been told by Leeds that he had to do it online and had not yet received a new password to do this (the person who had the password having left his business some time ago).

Evidence of Andrew Smith

- 16. Mr Smith said that the operator had responded to his PG13F&G investigation summary on 15 February 2017, somewhat after the deadline given of 13 January. The email had stated that Eric George would put together a training plan for drivers, that he would carry out spot checks on driver defect reporting, and that the weekly defect sheet would be withdrawn and replaced by a daily sheet identifying any specific defects on that day.

Evidence of Mark Richards

- 17. Mr Richards took me through the defects he had found with BX02 GNV on 2 September 2016 in detail. In his view, the defects had been present on the vehicle before the collision. The vehicle was in the top ten of the worst he had seen in his 30 career as a DVSA and police vehicle examiner.

Evidence of Tony Kirkham

- 18. Mr Kirkham said that he had been contacted by Mr Bentley in November 2016 to discuss whether his vehicles were exempt from MOT requirements as plant vehicles. He had been contacted again in 2017 after Mr Bentley had received the inquiry documents. He had told Mr Bentley that moving to a leased vehicle on a repair and maintenance contract would be a much better way of ensuring prompt and effective maintenance. The plan for the future was for Mr Kirkham to attend the operator around once a month to check that things were on track.

Evidence of Eric George

- 19. Mr George described his experience as a transport manager for such companies as TNT and Norbert Dentressangle. He had become involved with Midland Poling Services Ltd in September 2016. He had tried to pull the disorganised paperwork together and look at putting new procedures in place. There was still work to be done: daily defect sheets had not yet been rolled out (drivers were still using weekly ones) and the driver training plan alluded to in the operator's reply of 15 February 2017 to VE Smith's report had not yet been completed.

Closing submission

- 20. I indicated to Mr Wilcox that this was unlikely to be a case I would deal with by way of a warning or a token suspension or curtailment. More probable outcomes, given the gravity of the roadworthiness non-compliance which the evidence had revealed, and the fact that the operator had an undistinguished history of roadworthiness prohibitions, were a meaningful period of suspension or revocation. Mr Wilcox asked for and was given a short adjournment in which to take instructions.
- 21. Summing up, Mr Wilcox said that it was accepted that the operator's was a sorry tale over the last five years. He asked me to be careful about making any adverse findings about Mr Bentley's failure to implement most of the undertakings on the licence: it was possible that there had been a misunderstanding or a miscommunication with the licensing unit in Leeds. Such things happened as was

shown by the fact that the operator's reply of 15 February 2017 to VE Smith, although forwarded by Mr Smith to my office, had not found its way into my bundle. The operator accepted that there had been a failure to solve the driver defect reporting problem. But there was now cause for optimism with the involvement of Eric George and Tony Kirkham. A plan was now in place for improved compliance. The acquisition of a new vehicle on a repair and maintenance lease should assist with this. The company's finances were in order: putting it out of business would have an adverse effect on those who relied on the company for work, albeit on a self-employed basis. A suspension would have a very serious effect on the company's ability to service its contracts. He hoped that any suspension would be the minimum appropriate for the gravity of the case.

Findings

22. In the light of the evidence, I make the following findings:

- i) the operator's vehicles have incurred three roadworthiness prohibitions from DVSA from four encounters over the past two years, with the police prohibition of BX02 GNV on 2 September 2016 in addition. Two of those four prohibitions were S-marked (Section 26(1)(c)(iii) of the 1995 Act refers);
- ii) the operator has failed to fulfil its undertaking to keep vehicles fit and serviceable (Section 26(1)(f) refers). The condition of both BX02 GNV on 2 September 2016 and of BL02 UYM when presented at the weighbridge on 16 November 2016 was lamentable;
- iii) the operator has also failed to fulfil undertakings relating to frequency of safety inspections and auditing of driver defect reporting. I do not accept Mr Bentley's explanation that he thought he had been absolved from these. The letter from OTC Birmingham of 4 November 2014 refers only to a release from the undertaking to have regular audits: the amended licence enclosed with that letter still listed the other undertakings and the checklist signed by Mr Bentley on 13 May 2016 also listed them. It should have been abundantly clear to Mr Bentley that the undertakings still applied;
- iv) poor vehicle maintenance and poor driver defect reporting have been a feature of this operator almost since the commencement of its licence in 2006. Numerous prohibitions, of a nature remarkably similar to the more recent ones under discussion at this inquiry, brought the company to a public inquiry in 2008. Further prohibitions over 2009-12, including two S-marked prohibitions, led to a warning letter, the re-imposition of regular audits and a reduction in the safety inspection frequency in 2012. Given this history, I find that the company has been extraordinarily negligent in its failure to ensure that lasting improvements were made. This negligence was particularly evidenced by the fact that in November 2016, more than two months after the collision involving the severely defective vehicle BX02 GNV, VE Smith issued an S-marked prohibition to BL02 UYM for some of the same issues which had been found on BX02 GNV (loose suspension bolts, leaking exhaust, ABS fault);
- v) the failures which led to BX02 GNV developing a defect which caused the serious collision on 2 September 2016 were not due to a one-off lapse by either driver or supervisor. They stemmed from a systematic failure by the company to treat maintenance with the seriousness it deserved. When the vehicle was assigned to a contract in Cornwall in June 2016, Mr Bentley should have made arrangements for it to be given safety inspections during that contract. He could have either arranged a maintenance contract with a local provider or ensured it returned to the Midlands to have inspections carried out by the usual

maintainer. He did neither, preferring to leave things in the hands of Mr O'Toole and assume that he was looking after everything. The simple absence of any invoice for safety inspections of BX02 GNV after 4 June 2016 should have alerted him to the fact that none was being carried out;

- vi) the operator has been slow to take action even after the collision on 2 September 2016 and the subsequent DVSA visits in November and December. The operator missed the deadline for response to DVSA's notice of shortcomings by more than a month. As we learnt at the inquiry, some of the things that the operator promised in the response of 15 February 2017 that it would do have still not been done (the move to a proper daily defect sheet and the development of a driver training plan). There was no evidence either of the promised spot checks of driver defect reporting, although Mr George claimed that he was now carrying them out. Given the seriousness of the findings, the response has been disappointingly lacklustre.

Conclusions

Operator's licence

- 23. I conducted a balancing exercise to conclude what regulatory action would be appropriate. On the negative side of the balance were the findings above. On the positive side was the introduction of Mr Kirkham and Mr George and the move to a newer vehicle and a reputable main dealer maintainer. The positive issues came very late in the day and, as noted above, much of the promised improvement has yet to be implemented. Set against the very substantial negative issues I find them of comparatively little weight.
- 24. I asked myself the "“Priority Freight”¹ question of whether I could trust the operator to comply in the future. I am afraid that I cannot. Mr Bentley's attitude in the inquiry was of a man who had been let down by those around him – his supervisor, his maintainer, his driver. It does not seem to have occurred to him that the responsibility lies with him as director and that he wholly failed to establish the necessary culture of safety within the company, even after the numerous prohibitions, the 2008 public inquiry and 2012 warning had clearly signalled to him that the company's licence was at risk. He admitted to a sense of embarrassment over the condition of BX02 GNV although did not appear to feel any deeper sense of shame which most people might consider more appropriate in a case where the dire condition of a vehicle had been responsible for inflicting severe and life-changing injury on an innocent by-stander. Given the company's long history of running unroadworthy vehicles and continuing to do so despite the warning signals described above, I have no confidence at all that the company, under Mr Bentley's direction, can be trusted to do better in the future.
- 25. If the evidence demonstrates that future compliance is unlikely then that will, of course, tend to support an affirmative answer to the "Bryan Haulage"² question: is the conduct such that the operator ought to be put out of business? In this case I am persuaded that it is. The company has operated seriously unroadworthy vehicles throughout most of the life of the licence and has failed to instil the necessary culture of safety. Mr Bentley clearly took little interest in the safety of the company's vehicles, assuming – against all evidence – that others were taking care of it. The result was a company culture where vehicle safety was routinely ignored. Road safety and fair competition against operators who take the trouble and expense to comply have been jeopardised. This neglect culminated in the horrifying condition of BX02 GNV

¹ Appeal 2009/225 to the Transport Tribunal

² Appeal 217/2002 to the Transport Tribunal

on 2 September 2016, a condition which caused a collision and very serious injury. The company deserves to go out of business.

26. I am therefore revoking the licence under Section 26(1)(c)(iii) and (f). My degree of trust in the operator is so small and my concern for the risk it poses to safety so great that I am giving less than the normal 28 days notice of revocation. The revocation will take effect at 0001 hours on 13 May 2017.

Director- disqualification

27. Gavin Bentley is the sole director and the controlling mind of the company. Because of the very serious findings outlined above, and having performed a similar balancing act described as for the company, I conclude that Mr Bentley deserves to be disqualified under Section 28 from holding a licence in the future. In deciding upon the length of his disqualification, I have taken account of paragraph 93 of the STC's Statutory Guidance Document 10. This posits a starting point of between one and three years for a first public inquiry (this is the company's second for similar issues, with a warning in between) but a period of between five and ten years or even indefinitely in certain cases where an operator has deliberately put life at risk and/or has knowingly operated unsafe vehicles. While I have stopped just short of finding that the operator *deliberately* put life at risk, it clearly has knowingly operated unsafe vehicles. From even the most cursory glance at BX02 GNV in July and August 2016, it would have been obvious that it was not roadworthy. Two trays to collect dripping oil had been wired to the vehicle, the mirror had been patched up with tape and the fastenings of the tool boxes fixed with dangerous U-nails. Clearly someone at the company knew full well that the vehicle was unsafe. Mr Bentley may not personally have known the exact details but he did not care enough about safety to establish and oversee a system which would have prevented the vehicle deteriorating to such an extent. Nor did he do anything to prevent BL02 UYM from being in an extremely poor condition in November 2016, more than two months later. Even today, he does not seem to understand his responsibilities.
28. In the light of the STC's guidance, I have determined upon a disqualification period just over midway between the five and ten years deemed appropriate where operators have knowingly operated unsafe vehicles. I am disqualifying him for eight years.

Enforcement of this decision

29. I am requesting DVSA and the Police to employ their ANPR and on-road resources to identify and stop any vehicles operated by Midland Poling Services Ltd after 0001 hours on 13 May 2017. Any such vehicle they find carrying telegraph poles or other goods on the public road after this time is liable to be impounded.



Nicholas Denton
Traffic Commissioner
27 April 2017