

IN THE SCOTTISH TRAFFIC AREA



DECISION OF THE DEPUTY TRAFFIC COMMISSIONER FOR SCOTLAND

Goods Vehicles (Licensing of Operators) Act 1995 (The Act)

BRYCE MCMAHON HOPKINS – OM 1073344

TRANSPORT MANAGER STEPHEN HENDRY

PUBLIC INQUIRY HELD AT EDINBURGH ON 3 DECEMBER 2019

CONJOINED WITH DRIVER CONDUCT HEARINGS:-

**BRYAN ANDREW MAIR
WILLIAM JAMES ALLAN
SCOTT WALKER**

Decision

1. Bryce McMahon Hopkins' operator licence OM1073344 is to be revoked from 23:59 Friday 8 May 2020 on the grounds that (1) Mr Hopkins has not fulfilled the undertaking in the licence that the rules on drivers' hours and tachographs would be observed – s.26 of the Act and (2) Mr Hopkins is no longer of good repute- s.27 of the Act.
2. In terms of section 28 of the Act, Bryce McMahon Hopkins will be disqualified from holding or obtaining an operator's licence for an indefinite period from 23:59 Friday 8 May 2020. I also direct that should Mr Hopkins become the director of, or hold a controlling interest in a company that holds an operator's licence, or of a company of which such a company is a subsidiary, or operates any goods vehicles in partnership with a person who holds such a licence, the licence of that company or that person shall be liable to revocation, curtailment or suspension under section 26 of the 1995 Act.
3. Stephen Hendry has lost his repute as a transport manager. I direct that in terms of Article 14 (2) Mr Hendry should be disqualified from acting as a transport manager until such time as he obtains a new Certificate of Professional Competence as a transport manager as an appropriate rehabilitation measure. Mr Hendry's disqualification shall begin at 23:59 on Friday 8 May 2020.

4. Bryan Andrew Mair is unfit to hold a LGV licence. His LGV licence is revoked with effect from 23:59 Friday 8 May 2020. Mr Mair will be disqualified from holding a LGV licence for a period of 7 years from the date of revocation.
5. William James Allan is unfit to hold a LGV licence. His LGV licence is revoked with effect from 23:59 Friday 8 May 2020. Mr Allan will be disqualified from holding a LGV licence for a period of 3 years 6 months from the date of revocation.
6. Scott Walker is unfit to hold a LGV licence. His LGV licence is revoked with effect from 23:59 Friday 8 May 2020. Mr Walker will be disqualified from holding a LGV licence for a period of 7 years from the date of revocation.

1. The Public Inquiry and conjoined Driver Conduct Hearings were attended by:-
 1. Barry Wardrop, Traffic Examiner, DVSA
 2. Sandy Davidson, Senior Traffic Examiner, DVSA
 3. Bryce McMahon Hopkins, Operator
 4. Stephen Hendry, Transport Manager for Mr Hopkins
 5. Bryan Mair, Driver.
2. A number of drivers were called but did not attend:-
 1. Scott Walker, who stated he was unable to attend because of his work commitments.
 2. William Allan, who had not replied to the correspondence calling him to a driver conduct hearing.
 3. Thomas Kirkwood, who was deceased.
3. Before I started to hear evidence I had a discussion with the parties about what their positions were in relation to the DVSA evidence in Mr Barry Wardrop's Public Inquiry Statement in an attempt to narrow the issues. None of the parties disputed that Mr Wardrop had carried out investigations and that these investigations had resulted in Mr Wardrop identifying possible breaches of the driver's hours rules and regulations. They did dispute some of Mr Wardrop's conclusions about who had been committing these breaches. Mr Bryan Mair accepted that he had used driver cards belonging to Mr Scott Walker and Mr Bryce Hopkins. He claimed, however, that on some of the occasions where Mr Wardrop suspected that Mr Mair was using Mr Walker's driver card, Mr Walker was in fact driving. Mr Bryce Hopkins said that Mr Walker did drive for him on occasions. He did not know anything about Mr Thomas Kirkwood's use of Mr Bell's card. Mr Hopkins said that on some of the occasions when Mr Wardrop believed that Mr Hopkins' card was being used by other drivers, Mr Hopkins was in fact driving. Mr Hendry did not dispute Mr Wardrop's findings and Mr Hendry accepted that the control of vehicles and drivers during the period had

been wholly inadequate. In the circumstances Mr Barry Wardrop's Public Inquiry Statement was taken as being the equivalent to his evidence in chief.

The evidence

Bryan Mair

4. Mr Mair explained that he had been driving HGV tippers for 20 years. He had worked for Mr Hopkins for 10 years. Mr Hopkins traded as CMB Haulage.
5. Mr Mair had been interviewed by Mr Wardrop on 12 June 2019. Mr Wardrop put to Mr Mair that Mr Mair had used Mr Scott Walker's driver card. Mr Mair's initial position was that he had not used Scott Walker's card. Mr Mair changed his position and said that "You've got me I'm guilty – I'm not guilty of them all though, Scott Walker did drive as well." Mr Wardrop asked him how many times he had done this, and Mr Mair stated "Honestly, pass if it had been quick card changeovers it has been me but if it is full days it has been Scott." Mr Mair accepted that the majority of the quick card changeovers had been to show Mr Mair had taken a break when he had not. Mr Mair denied that he had been using Mr Walker's card to allow him to work double shifts.
6. The interview was continued on 19 June 2019. Mr Mair said that he had given Mr Walker REDACTED at Harthill Services on 5 November 2018 and that this was when Mr Walker had given Mr Mair his driver card. Mr Mair had given Mr Walker his driver card back when Mr Walker had needed it for driving. Mr Walker then returned it to Mr Mair. Mr Mair ended the interview before Mr Wardrop could ask him about whether or not he had used Mr Bryce Hopkins' driver card.
7. At the Public Inquiry Mr Mair accepted that he had used Mr Walker's driver card and he maintained his position that Mr Walker had done some driving for Mr Hopkins – he thought on at least 10 times.
8. I went through the suspicious use of Mr Walker's card set out by Mr Wardrop at pages 11-46 of Mr Mair's Driver Conduct Brief. Mr Mair accepted that on 41 occasions between 19 February 2018 and 4 December 2018 he had knowingly made false records by using Mr Walker's card to disguise a variety of infringements including insufficient daily rest, exceeding 4½ hours driving without taking the required break or breaks and exceeding permitted working time. He accepted that on two occasions he had used Mr Walker's card to enable him to work a double shift.
9. Mr Wardrop had identified concerns that Mr Mair had been using Mr Hopkins' driver card between 15 January 2018 and 13 December 2018 – pages 46 to 65. I went through Mr Wardrop's concerns with Mr Mair. Mr Mair accepted that on 19 occasions he had used Mr Hopkins' driver card to knowingly make false entries, mainly to disguise exceeding 4 ½ hours driving without taking the required break or breaks.

Bryce Hopkins

10. Mr Hopkins explained that he had obtained his operator's licence in 2007 to do quarry work and similar work. According to Mr Hopkins everything had been fine until 2017 when Mr Hopkins had REDACTED. He had REDACTED. This meant that he was REDACTED. Mr Hendry had come in as Transport Manager in 2018. The fleet had been all digital for the last 4 years. Mr Hopkins had been downloading vehicle units and driver cards. The data had been analysed by a transport manager for another operator that he shared an operating centre with. If there had been any infringements identified they were followed up with the driver concerned. He had to leave the operating centre because the husband, who was the other operator in the operating centre, and the wife, who was the transport manager, divorced. This occurred while Mr Hopkins had been REDACTED. Mr Hopkins REDACTED in January 2018.

11. At that time data was being sent to Colin Sinclair of Advance Construction for analysis. Mr Hopkins would send Mr Sinclair the data every couple of weeks and Mr Sinclair would telephone Mr Hopkins a couple of weeks later to report back. As the name Advance Construction suggests, they are a construction company and not a tachograph analysis company. At the time of the Public Inquiry the data was being analysed by Tachoanalysis at Coatbridge.

12. I took Mr Hopkins to the Public Inquiry Brief and, in particular, the Statement prepared by Mr Wardrop. On 7 January 2019, Mr Wardrop had carried out a routine check of one of Mr Hopkin's vehicles – a 4 axle tipper truck being driven by William Allan. The vehicle was being operated without vehicle excise in force, the operator had never downloaded and the vehicle was overloaded. Mr Wardrop analysed the digital tachograph data at the roadside and became concerned about the driver card activity of Mr Allan and Scott Walker. This resulted in a further investigation. That investigation led Mr Wardrop to suspect that Mr Hopkins' drivers had been using other drivers' driver cards: -
 1. Mr Thomas Kirkwood appeared to have used a driver card belonging to Mr David Bell, a disqualified driver;
 2. Mr Thomas Kirkwood appeared to have used Mr Hopkins' driver card;
 3. Mr Bryan Mair appeared to have used Mr Scott Walker's driver card;
 4. Mr Bryan Mair appeared to have used Mr Hopkins' driver card;
 5. Mr William Allan appeared to have used Mr Scott Walker's driver card;
 6. Mr William Allan appeared to have used Mr Hopkins' driver card;
 7. Mr William Allan appeared to have used a driver card belonging to Mr Matthew Hendry, a driver who had carried out occasional work for Mr Hopkins.

13. In addition to the 24 occasions on which Mr Wardrop considered that Mr Hopkin's driver card had been used by other drivers, Mr Wardrop identified 34 other occasions when he suspected that Mr Hopkins had been the driver.

If Mr Hopkins had been driving, then this was while his entitlement to drive LGVs had been suspended on medical grounds.

14. I asked Mr Hopkins about Mr Wardrop's suspicion that Mr Kirkwood had been using the driver card of Mr Bell. Mr Hopkins did not disagree with Mr Wardrop's analysis and conclusion that Mr Bell's driver card had been used. Mr Hopkins said that this was "news to me". He did not know Mr Bell and did not know why Mr Kirkwood would have used Mr Bell's card. Mr Wardrop's analysis suggested the motive was to exceed 4 ½ hours driving without taking the required break or breaks and to exceed the daily driving limit. Mr Hopkins' evidence at the Public Inquiry about Mr Bell contradicted the reply he gave to Mr Wardrop at interview on 15 July 2019 when he said that Mr Bell had carried out a couple of shifts for him and was paid cash.
15. When I asked Mr Hopkins about Mr Wardrop's suspicions that Mr Kirkwood had used Mr Hopkin's driver card on 23 January 2018, Mr Hopkins suggested that perhaps Mr Mair had given Mr Hopkins' card to Mr Kirkwood.
16. Mr Hopkins did not have anything to say about Mr Mair's use of Mr Walker's driver card, nor about Mr Mair's use of Mr Hopkins' driver card other than he accepted Mr Mair's suggestion that it might have been Mr Hopkins who was driving on the 15 January 2018 and 25 January 2018. Mr Hopkins said that he had left his driver card in his van and Mr Mair must have picked it up from the van.
17. Mr Hopkins did not dispute Mr Wardrop's investigation, analysis and conclusions concerning Mr William Allan's use of Mr Walker's driver card, Mr Hopkins' driver card and Matthew Hendry's driver card set out at pages 83 to 106 of Mr Wardrop's Statement.
18. One of the reasons that Mr Wardrop had suspected that Mr Hopkins' driver card was being used by other drivers was because Mr Wardrop had investigated Mr Hopkins' driving entitlement and had discovered that Mr Hopkins had been notified by the DVLA on 17 January 2018 that because REDACTED his Group 2 LGV driving entitlement was revoked with effect from 18th January 2018. Mr Hopkins was told that he could only reapply for his Group 2 entitlement after a minimum of 12 months. Mr Hopkins did not appeal against that decision.
19. Mr Wardrop's analysis of the data showed that driving had been recorded on Mr Hopkins' driver card from 23 January 2018 through to December 2018. The last 4 months showed regular activity. At interview Mr Hopkins admitted that he had carried out driving but claimed that he had been told on the phone by the DVLA that he could drive if he felt comfortable to do so. Mr Hopkins explained to me that he only ever had a 3 year duration entitlement because of medical issues. When the 3 year period came to an end he was allowed to continue to drive until his renewal application was processed under s.88 of the Road Traffic Act 1988. Mr Hopkins had considered that he was authorised to drive despite the letter from the DVLA telling him that his Group 2 driving entitlement had been revoked. Mr

Hopkins had a new licence issued to him on 22 June 2018 which did not include the Category C entitlement. Mr Hopkins had obtained a new driver card and he had done his driver CPC.

20. Mr Hopkins was adamant that he did not know that his driver card was being used by other drivers. He explained that he left his driver card in a van and it could have been taken by other drivers from the van. When his new driver card came in he had asked Mr Mair to put it in the van.
21. I asked Mr Hopkins what action had been taken against Mr Mair. Mr Hopkins said that when he put the allegations to Mr Mair, Mr Mair had shrugged his shoulders. Mr Hopkins said that Mr Mair was given a warning not to do it again. Mr Mair had not been dismissed because it was hard to get drivers. Mr Mair had helped Mr Hopkins out. Mr Hopkins felt he had to stand by him and Mr Mair had a bit of money to pay back to Mr Hopkins (REDACTED).

Mr Stephen Hendry, Transport Manager

22. Mr Hendry was accepted as Transport Manager on the operator's licence in July 2018. This followed Mr Hopkins' dismissal of the previous Transport Manager and his request for a period of grace to find a replacement in April 2018.
23. Mr Hendry explained that he had worked as a part-time external Transport Manager for 7 to 8 hours a week. Mr Hendry's main occupation was a full-time HGV driver working between Monday and Friday. Mr Hendry had qualified as a Transport Manager 25 years ago and had "put it in the top drawer" for 23 years. He had not done any refresher training. He knew Mr Hopkins' was having problems with his previous Transport Manager and Mr Hendry offered to help Mr Hopkins out. Mr Hendry would come in on a Friday night, pick up the paperwork and drop it off when he had dealt with it over the weekend.
24. Mr Hendry accepted that he knew about vehicle unit and driver card analysis. He had not been involved in the scheduling of drivers to ensure that they were compliant with drivers' hours rules and regulations. He thought that Mr Hopkins' set up had room for improvement.
25. There had been an independent audit in March 2019. A result of the audit was that Mr Hendry became a full-time transport manager. I discussed the results of the audit with Mr Hendry. The audit is at pages 907 to 910 of the Brief.
26. The independent audit had identified that drivers were regularly breaching driver's hours rules and regulations and that there were large amounts of infringements that caused concern. Mr Hendry explained that until the audit was carried out he was unaware of this.
27. The Summary of Compliance Audit Shortcomings are worth setting out in full:-

“Drivers are breaching regulations. Breaches include Drivers exceeding daily driving time, duty time and failing to record full breaks. There are regular offenders with large amounts of infringements that cause concerns.

“Drivers Infringement letters and data produced by Tacho-data is not actioned. There is no clear process for handling such information as well as no filing system in place.

“There are large gaps in Drivers Records – Many of the reports have gaps with no chart.

“There is no evidence to suggest drivers are approached regarding issues highlighted through their reports.

“Lack of understanding by drivers on rules and regulations governing their hours.

“There was no evidence of missing mileage reports being provided.

“There were no planners in place to keep records of drivers’ digital tachograph downloads and no planner is in place to keep record of when a vehicle tachograph unit is downloaded.

“The tachograph information from downloads is not transferred to Tacho-data in a timely manner.

“Stephen Hendry is the nominated TM but only on a part-time basis. Stephen has not attended much in the way of CPD and has not attended any refresher courses recently.

“Working Time Directive is not fully managed and ad-hoc drivers do not always input other work onto their Tachograph Cards.

“No evidence of supplying information to drivers.

“No evidence of any regular talks with drivers on general industry news.

“No evidence of any Driver re-training linked to Tachograph issues.

“No photocopy of the driver CPC card available at the time of audit.

“Drivers are responsible for arranging their own CPC courses.”

28. Mr Hendry assured me that the remedial steps that the audit had recommended had been undertaken. He had not picked up on the misuse of driver cards because he had not been getting infringement reports back.

Findings in fact

29. Mr Wardrop's Public Inquiry Statement is 939 pages long. It contains a comprehensive review of data for the period January to December 2018. Mr Wardrop produced Driver Conduct Briefs which contained extracts of parts of the Public Inquiry Statement that were relevant to each driver. There was no challenge made to any of Mr Wardrop's analysis of the data. The only issues raised were (1) whether or not Mr Wardrop's conclusions about misuse of driver cards were correct, and (2) whether Mr Walker and Mr Hopkins were aware of the use of their cards by other persons.
30. Mr Bryan Mair
- Mr Mair accepted that on 41 occasions between February and December 2018 he had knowingly made false records by using Mr Walker's card. Mr Mair accepted that on 19 occasions between January and December 2018 he had knowingly made false records by using Mr Hopkin's card. Given Mr Mair admits 60 offences of knowingly making false records by using another driver's card it seems to me to be unnecessary to attempt to identify whether or not Mr Mair was using another driver's card on another 10 occasions.
31. Mr Thomas Kirkwood
- Mr Kirkwood is deceased. He was interviewed by Mr Wardrop on 26 March 2019. During that interview he denied using Mr Bell's driver card. He was invited to a further interview on 14 June 2019, but he did not attend. Mr Wardrop was not, therefore able to put the full results of his investigations to Mr Kirkwood, in particular the suggestion that Mr Kirkwood used Mr Hopkins' driver card as well.
32. I have considered Mr Wardrop's analysis of the data relating to Mr Kirkwood at pages 17 to 25 of Mr Wardrop's Statement. In it Mr Wardrop sets out his reasoning why he considered that Mr Kirkwood had used other drivers' cards.
33. I find Mr Wardrop's analysis and conclusions about Mr Kirkwood's use of Mr Bell's driver card to be compelling and I consider that Mr Wardrop's conclusions are correct. I find that Mr Kirkwood knowingly created false records to conceal exceeding 4 ½ hours driving without taking the required break of breaks.
34. I find Mr Wardrop's analysis and conclusions about Mr Kirkwood's use of Mr Bell's driver card to be compelling and I consider that Mr Wardrop's conclusions are correct. I find that Mr Kirkwood on 9 occasions between January and November 2018, knowingly created false records to conceal exceeding 4 ½ hours driving without taking the required break of breaks.
35. I also find Mr Wardrop's analysis and conclusions about Mr Kirkwood's use of Mr Hopkins' driver card to be compelling and I consider that Mr Wardrop's conclusions are correct. I find that on 23 January 2018 Mr Kirkwood

knowingly created false records to conceal exceeding 4 ½ hours driving without taking the required break of breaks.

36. Accordingly, I find that Mr Kirkwood knowingly created false records to conceal exceeding 4 ½ hours driving without taking the required break of breaks on 10 occasions between January and November 2018.

37. Mr William Allan

Mr Allan did not respond to the letter calling him to a Driver Conduct Hearing and he did not attend on 3 December 2019.

38. Mr Wardrop's analysis of the data relating to Mr Allan is at pages 83 to 109 of his Public Inquiry Statement (it is also contained in the Driver Conduct Brief)

39. In his investigation Mr Wardrop identified 28 occasions on which he believed that Mr Allan had knowingly created false records by either using Mr Walker's driver card, Mr Hopkins' driver card, Mr Mathew Hendry's driver card, or by driving without a card.

40. I find Mr Wardrop's analysis and conclusions about Mr Allan's misuse of other driver's cards and driving without a card to be compelling and I consider that Mr Wardrop's conclusions are correct.

41. Mr Scott Walker

Mr Walker advised the OTC Edinburgh that he could not attend because of work commitments.

42. Mr Wardrop's investigation of the use of Mr Walker's driver card is summarised at pages 8 to 12 of the Public Inquiry Statement. Mr Wardrop makes his conclusions about Mr Walker at pages 100 to 101 of the Driver Conduct Brief.

43. I have considered Mr Wardrop's investigation, his analysis and his conclusions about Mr Walker and I find his analysis and conclusions compelling. I agree with, and accept, Mr Wardrop's analysis that Mr Walker allowed his driver card to be used by other drivers, Bryan Mair and William Allan allow them to knowingly create false records.

The total number of instances when drivers working for Mr Hopkins knowingly created false records between January and December 2018

44. Mr Mair admitted 60 offences. I have found that Mr Kirkwood knowingly created false records on 10 occasions. I have found that Mr Allan knowingly created false records on 28 occasions. Accordingly I find that on 98 occasions in a 12 month period Mr Hopkins' drivers knowingly created false records. In the main these offences were committed in order to conceal the fact that the driver had driven for more than 4 ½ hours without taking the

required breaks. While these offences were serious there were more chilling examples of drivers breaking the driver's hours rules and regulations.

45. At pages 86 and 87 of his Statement, Mr Wardrop sets out what he considered to be "the most serious in this investigation". In the 3 day period 3 to 5 December 2018 Mr Allan was driving 2 vehicles operated by Mr Hopkins. Mr Allan was on duty for 58 hours and 15 minutes without taking a daily rest period of at least 9 hours. The total driving over the period was 29 hours and 8 minutes.

Was Mr Hopkins aware of the use of his driver card by Mr Mair, Mr Kirkwood and Mr Allan, and of his drivers' misuse of driver cards belonging to Mr Bell, Mr Walker and Mr Matthew Hendry?

46. Mr Hopkins denied that he knew that his card was being used by his drivers. Mr Hopkins' explanation for how his card came to be in the possession of the other drivers was that he left it in his van and that Mr Mair, and other drivers had access to the van. Similarly, Mr Hopkins denied that he had any knowledge that his drivers were misusing other drivers' cards.
47. Against Mr Hopkins is the fact that throughout the period from April 2018 (when he notified the OTC that he had dismissed his previous Transport Manager) to December 2018 Mr Hopkins was solely responsible for the scheduling of the drivers' work. Mr Hendry only took over this role when he became full-time in March 2019. To take the example immediately above involving Mr Allan between 3 and 5 December 2018, if Mr Hopkins was not aware of who was driving his vehicles and what hours they were working he certainly should have been. Similarly when Mr Kirkwood was using Mr Bell's card, Mr Hopkins should have been aware that Mr Bell was not driving for his company.
48. Mr Hopkins explained that there were issues with getting the data analysed. Mr Hendry had suggested to Mr Hopkins that Mr Hopkins should purchase the necessary software but Mr Hopkins said this was too expensive. The arrangement that was in place throughout 2018 was that data was being analysed by Colin Sinclair, Advance Construction every couple of weeks. I make no criticism of Mr Sinclair's analysis of the data that was sent to him. I do not know what data was sent to him, nor what he was asked to do- the analysis that he conducted may well have been suitable for a company such as Advance Construction. The issue for Mr Hopkins (and latterly for Mr Hendry when he became Transport Manager in July 2018) was whether or not the undertaking on the licence:- "The rules on drivers' hours and tachographs are observed and proper records are kept and that these are made available on request." was fulfilled by the arrangements that Mr Hopkins (and latterly Mr Hendry) had in place. Mr Hopkins and Mr Hendry quite properly accepted at the Public Inquiry that the undertaking had not been fulfilled.
49. I accept that at the beginning of the year Mr Hopkins had been seriously unwell, and that there had been a falling out with his previous transport

manager that resulted in his dismissal and a period of grace being sought in April 2018. However, it remained Mr Hopkins' responsibility to ensure that the undertakings on the licence were fulfilled.

50. I accept that it was, in theory, possible for Mr Hopkins to have been unaware of the use of his card by others, and of his drivers' misuse of driver cards, however it seems to me that this can only have occurred if Mr Hopkins had catastrophically failed in his responsibilities to control his vehicles and his drivers during the 12 months in question.
51. I have, however, come to the conclusion that incompetence is not the correct explanation for 98 instances of drivers knowingly creating false records over a 12 month period. I cannot accept that Mr Hopkins had no knowledge of the use of his card, and of his drivers' misuse of driver cards.
52. My reasons for finding that Mr Hopkins was aware of what was going on are:-
 - 1) I did not believe Mr Hopkins when he said that he had been told by the DVLA over the telephone that he could continue to drive Class 2 LGVs despite the fact that he had received written confirmation from the DVLA that his entitlement had been revoked with effect from 18 January 2018. I found Mr Hopkins' explanation utterly incredible. I cannot accept that the DVLA, having revoked Mr Hopkins' entitlement, would have told him over the telephone that he could continue to drive. The letter from the DVLA did not create a "a grey area" as Mr Hopkins described it. Mr Hopkins knew that his Class 2 entitlement had been revoked. He continued to drive Class 2 LGVs because it suited him to do so. The fact that I did not believe Mr Hopkins about this important matter leads me to conclude that I should not believe Mr Hopkins in relation to other matters unless there is some other evidence to support Mr Hopkins' evidence.
 - 2) If I was wrong about Mr Hopkins and his entitlement to drive LGVs then I find that Mr Hopkins lied to Mr Wardrop at interview when he said that David Bell had carried out a couple of shifts for him and was paid cash (see p. 927). Mr Bell was a disqualified driver who had reported his card lost or stolen in June 2017. I consider that Mr Hopkins' evidence at the Public Inquiry -that he did not know Mr Bell, was the truth.
 - 3) Mr Hopkins claimed that he was downloading driver cards and getting them analysed. If he was doing this then he would have known whose cards were being downloaded. For example Mr Scott Walker's driver card was downloaded and the data sent to the company that Mr Hopkins used on 21 December 2018 (Production SW4). Mr Wardrop's investigation showed that Mr Walker's card had been inserted into Mr Hopkins' vehicles on 3, 4, 5, 7, 8, 12, 13 and 14 December 2018 when Mr Wardrop suspected that Mr Allan was using Mr Walker's card. I find it hard to believe that Mr Hopkins was

not aware that Mr Walker's card was being used in his vehicles when Mr Walker was not working for him.

- 4) The fact that Mr Hopkins continues to employ Mr Mair to this day, a man who on 60 occasions created false records using Mr Hopkins' card and Mr Walker's card is remarkable if Mr Hopkins had been unaware of what Mr Mair had been up to.
- 5) The sheer number of occasions on which driver cards had been misused- 98, also lead me to doubt that Mr Hopkins did not know what was going on. This misuse was not occasional but frequent. It was not just misuse by one driver but by three drivers. This operation was not a large operation with many drivers. I do not understand how Mr Hopkins, who was responsible for the scheduling of drivers until March 2019, cannot have known what was going on.

What was the extent of Stephen Hendry's knowledge of, and responsibility for the misuse of drivers' cards?

53. There is no suggestion from the evidence that was led that Mr Hendry had any knowledge of what was going on and I find that Mr Hendry was not aware of the misuse of drivers' cards.
54. I accept Mr Hendry's evidence at the Public Inquiry and when he was interviewed by Mr Wardrop, that he had not had any responsibility for the scheduling of drivers until he became full time in March 2019. When he was a part-time transport manager from July 2018 he would come in at weekends and deal with paperwork. He did not have any real contact with the drivers.
55. I accept Mr Hendry's evidence that he raised with Mr Hopkins the possibility of Mr Hopkins purchasing tachograph analysis software but Mr Hopkins took the view that this would be too expensive.
56. I accept that Mr Hendry inherited a system which, as events have made clear, was wholly inadequate to provide the transport manager with the information that they required in order to comply with the licence undertakings.

Findings regarding breaches of the legislation

BRYCE MCMAHON HOPKINS OM1073344

57. I have found that three drivers working for Mr Hopkins knowingly created false records by using other drivers' cards and by driving without a card on 98 occasions between January and December 2018. I have found that Mr Hopkins was aware of the behaviour of his drivers.
58. I am satisfied, therefore that s.26 of the Goods Vehicles (Licensing of Operators) Act 1995 empowers me to revoke, suspend or curtail the

operator's licence on the ground that the undertaking in the licence to has not been fulfilled.

59. I have to consider whether or not the operator's licence should be revoked on the basis that Mr Hopkins no longer satisfies the requirements of section 13A(2) – that he is no longer of good repute- see section 27 of the 1995 Act. If I find that Mr Hopkins is no longer of good repute then I have to revoke the licence.
60. In deciding whether or not Mr Hopkins is of good repute, I have to decide if Mr Hopkin's conduct is such that he ought to be put out of business. I have had regard to the Senior Traffic Commissioner's Statutory Document No. 10 The Principles of Decision Making and the Concept of Proportionality and in particular paragraph 34 onwards.
61. Before I carry out the balancing exercise, in this case it is appropriate that I should consider a preliminary question: How likely is it that this operator will, in the future, operate in compliance with the operator's licensing regime? I have found that Mr Hopkins was lying to me when he said that he was not aware of the misuse of driver cards by his drivers. I have also found that Mr Hopkins lied to Mr Wardrop at interview when Mr Hopkins said that he knew Mr Bell. In these circumstances, given Mr Hopkins has lied in the past I find that Mr Hopkins cannot be trusted. I find, therefore, that it is not likely that the operator will operate in compliance with the operator's licensing regime.
62. In carrying out the balancing exercise I have to consider the positives and negatives in this case. There is little that can be said on the positive side. Mr Wardrop began the investigation after a roadside encounter on 7 January 2019. Mr Wardrop sent a request for information to Mr Hopkins on 21 January 2019. This seems to have spurred Mr Hopkins into taking some action as he instructed a transport consultant, Paul Reid, to carry out an independent audit of compliance with tachograph rules and regulations, WTD, drivers hours, driving licence checks and general driver information on 5 March 2019. Mr Hopkins also instructed a transport consultant, Gary Hughes, to carry out an independent audit of vehicle maintenance on 5 March 2019. Both of these reports made various suggestions for improvements. Mr Hopkins and Mr Hendry assured me that the recommendations had been acted upon and that the operation was now compliant. However Mr Hopkins was quite candid in stating that two recommendations that both reports had made, that Mr Hendry should be sent on a Transport Manager Refresher Training Course had not acted upon. Nor had Mr Hopkins attended an Operator Licence Awareness Training Course. Mr Hopkins said that this was because he was advised by Mr Hughes not to do this until the outcome of the Public Inquiry was known. It is not clear when Mr Hughes gave this advice. Although Mr Hopkins may have suspected that he was going to have to attend a public inquiry he was not interviewed by Mr Wardrop until July 2019 and the letter calling Mr Hopkins to public inquiry was not sent until 29 October 2019. If the advice was given by Mr Hughes in March 2019 then this was advice that Mr Hopkins should have disregarded. It should have been clear from both

audits that there were serious problems with both Mr Hopkins' and Mr Hendry's knowledge and that there was an urgent need for this to be remedied if Mr Hopkins was going to operate his vehicles safely. I cannot accept that it would have been reasonable for Mr Hopkins to decide to not pay for necessary training because of the risk that his operator's licence would not survive a public inquiry.

63. So far as the negatives are Mr Hopkins received a warning from the Traffic Commissioner on 18 July 2014 following an unsatisfactory maintenance investigation and for failing to notify a change in transport manager, and further warning on 6 February 2018 for parking vehicles away from the operating centre and because of the need to improve pass rates at annual test. Mr Hopkins had prohibitions for roadworthiness of vehicles and trailers in the last 2 years. Mr Hopkins' vehicles received fixed penalty notices for overloading vehicles on 7 January 2019 and 13 November 2019. I have found that Mr Hopkins has been complicit in the widespread and frequent knowing creation of false records – 98 occasions between January and December 2018.
64. I was also not impressed by the steps that Mr Hopkins took when he learnt of the extent of the breaches of the tachograph rules and regulations. Mr Hopkins said that he raised the matters with Mr Mair and gave him a warning. Mr Hopkins said that he felt that he had to stand by Mr Mair as Mr Mair had helped him out in the past and because Mr Mair owed him money (about REDACTED). This shows to me that Mr Hopkins failed to appreciate the seriousness of Mr Mair's conduct. It was not sufficient for Mr Mair to be given a verbal warning. It was unacceptable for Mr Hopkins to allow his disciplining of Mr Mair to be influenced by feelings of personal loyalty or self-interest (because he was owed money). Mr Hopkins's duty as the holder of an operators licence was to put the interests of road safety and fair competition above his personal interests.
65. I am satisfied that in this particular case if other operators heard of what Mr Hopkins had done, they would consider that Mr Hopkins is not of good repute.
66. I find that it is proportionate to make a finding that Mr Hopkins is not of good repute and therefore his operator's licence should be revoked under section 27 of the 1995 Act. I am also satisfied that would be proportionate to revoke the operator's licence under section 26 of the 1995 Act. Accordingly I direct that Mr Hopkins' operator licence should be revoked from 23:59 Friday 8 May 2020.
67. I am satisfied that this is a case where both revocation and disqualification are necessary as Mr Hopkins cannot be trusted to comply with the regulatory regime and that the objectives of the regime, the protection of the public and fairness to other operators, require Mr Hopkins to be disqualified.
68. I order that in terms of section 28 of The Goods Vehicles (Licensing of Operators) Act 1995, Mr Hopkins should be disqualified from holding or

obtaining an operator's licence for an indefinite period from 23:59 Friday 8 May 2020. Mr Hopkin's conduct is the worst case of breaching the drivers' hours rules and regulations that I have seen. I also direct that should Mr Hopkins become the director of, or hold a controlling interest in a company that holds an operator's licence, or of a company of which such a company is a subsidiary, or operates any goods vehicles in partnership with a person who holds such a licence, the licence of that company or that person shall be liable to revocation, curtailment or suspension under section 26 of the 1995 Act.

69. Mr Hopkins could not be called to a Driver Conduct Hearing as he does not hold a vocational driving licence. I direct that a note should be added to Mr Hopkins' file so that if he does apply for a vocational driving licence he will be called to a Driver Conduct Hearing to consider whether he is unfit to hold a vocational driving licence.

STEPHEN HENDRY – TRANSPORT MANAGER

70. The issue for Mr Hendry is whether or not he continues to meet the requirement that he is of good repute. There is no onus on Mr Hendry to prove that he is of good repute.
71. I accept that Mr Hendry was not aware of the behaviour of Mr Hopkins and his drivers. Mr Hendry was at a disadvantage because he was only coming in at weekends to deal with paperwork. The problem that Mr Hendry faces is that the expectation of transport managers is that they should actively discharge their duty to exercise continuous and effective management. As is made clear in the Senior Traffic Commissioner's Statutory Document 3 Transport Managers, and in particular at paragraph 24 and following, Mr Hendry should have exercised continuous and effective management of the transport activities of Mr Hopkins' business. I accept that Mr Hendry asked Mr Hopkins to purchase tachograph software and that Mr Hopkins refused, but in those circumstances Mr Hendry should have notified Mr Hopkins in writing that he needed the software, and if Mr Hopkins had continued to refuse, he should have resigned.
72. Mr Hendry had obtained his transport manager qualification 25 years ago and had 'put it in the top drawer'. He had not undergone any refresher training. It is clear from the independent audits that Mr Hendry needed refresher training. The Audit Report prepared by Mr Reid on 5 March 2019 (p.907-910) showed that there were serious issues that should have been addressed earlier. I accept that many of the recommendations were implemented. However Mr Hendry's acceptance that he would not be sent on a Transport Manager refresher course indicates to me that Mr Hendry was not standing up to Mr Hopkins as he should have done. Mr Hendry should have had the self-awareness after the audits to realise that his knowledge was very out of date and that he needed to have refresher training as soon as possible.

73. I find that Mr Hendry has lost his repute as a transport manager. I consider that his failure to fulfil his general responsibilities as a transport manager, as set out in Statutory Document 3 paragraph 54 to 57, was due to Mr Hendry's ignorance and failure to stand up to Mr Hopkins and insist on changes being made.
74. I direct that in terms of Article 14 (2) Mr Hendry should be disqualified from acting as a transport manager until such time as he obtains a new Certificate of Professional Competence as a transport manager as an appropriate rehabilitation measure.
75. Mr Hendry's disqualification shall begin at 23:59 on Friday 8 May 2020.

BRYAN ANDREW MAIR - DRIVER

76. As I have set out above, I went through the suspicious use of Mr Walker's card set out by Mr Wardrop at pages 11-46 of Mr Mair's Driver Conduct Brief. Mr Mair accepted that on 41 occasions between 19 February 2018 and 4 December 2018 he had knowingly made false records by using Mr Walker's card to disguise a variety of infringements including insufficient daily rest, exceeding 4½ hours driving without taking the required break or breaks and exceeding permitted working time. He accepted that on two occasions he had used Mr Walker's card to enable him to work a double shift.
77. Mr Wardrop had identified concerns that Mr Mair had been using Mr Hopkins' driver card between 15 January 2018 and 13 December 2018 – pages 46 to 65. I went through Mr Wardrop's concerns with Mr Mair. Mr Mair accepted that on 19 occasions he had used Mr Hopkins' driver card to knowingly make false entries, mainly to disguise exceeding 4 ½ hours driving without taking the required break or breaks.
78. In total Mr Mair accepted that on 60 occasions between January 2018 and December 2018 he had used driver cards belonging to Mr Walker and Mr Hopkins and had knowing made false entries to disguise tachograph offences.
79. I am required to decide (1) whether Mr Mair's conduct is such as to make him unfit to hold an LGV licence, (2) if Mr Mair is unfit to hold an LGV licence should I revoke or suspend his LGV licence, and (3) if I decide to revoke his LGV licence if Mr Mair should be disqualified and if so for what period (s.116 and s.117 of the Road Traffic Act 1988).
80. I am satisfied that Mr Mair's conduct is such as to make him unfit to hold an LGV licence. I am satisfied that I should revoke his LGV licence with effect from 23:59 Friday 8 May 2020. I determine that Mr Mair should be disqualified for a period of 7 years. My reasoning is set out below.

81. I have had regard to the Senior Traffic Commissioner's Statutory Document No. 6 Vocational Driver Conduct in considering how to dispose of this case. Paragraph 77 states:-
"77. Traffic Commissioners are likely to regard the falsification as more serious than the offence that it may be designed to conceal. Those who commit offences of this kind must understand that there will be serious consequences if and when the matter comes to light. A cumulative and significant period of disqualification which reflects the offence that has been subject to concealment, the falsification of records and/or use of a manipulation device, is the likely outcome. Subsequent conduct is also likely to be of limited weight."
82. Annex A suggests that the starting point for using a digicard belonging to another is a 4 week suspension for up to 6 offences and revoke and disqualify for 12 months for more than 6 offences.
83. So far as the positives are concerned Mr Mair co-operated with the DVSA. He is clearly valued by his employer and is considered to be a 'good' driver. Mr Mair does not have any record of similar offences and he has not given any cause for concern since December 2018.
84. Mr Mair explained that he committed these offences in order to earn more money. He said that no-one else knew. This had been the only time he had ever done it. Mr Mair said that losing his LGV would have a severe impact on his ability to earn a living.
85. Taking all of these factors into account I am satisfied that Mr Mair is not fit to hold a LGV licence. A consequence of that finding is that I must suspend or revoke his LGV licence. I am satisfied that suspension or revocation is a proportionate response to Mr Mair's behaviour. In this case, taking into account the Statutory Document, I am satisfied that suspension would not be an adequate response to the seriousness of Mr Mair's behaviour. The frequent use of another person's card over a substantial period of time (60 occasions in 12 months) mean that I must revoke Mr Mair's LGV licence and disqualify him for a substantial period of time – well in excess of the starting point of more than a year. I consider that given the level of Mr Mair's use of other drivers' card to Mr Mair's financial benefit, and the requirement to deter others from committing similar offences it is appropriate for Mr Mair to be disqualified from holding a LGV licence for 7 years.

WILLIAM JAMES ALLAN – DRIVER

86. Mr Allan did not respond to the letter calling him to a Driver Conduct Hearing and he did not attend on 3 December 2019. I considered whether or not the DCH should be adjourned to allow Mr Allan to attend. I reached the view that I was satisfied that Mr Allan had received the papers and, therefore, that his failure to reply and to attend was a matter that should not prevent me from reaching a decision in his absence.

87. As I set out above Mr Wardrop's analysis of the data relating to Mr Allan is at pages 83 to 109 of his Public Inquiry Statement and at pages 2 to 34 of the Driver Conduct Brief.
88. In his investigation Mr Wardrop identified 28 occasions on which he believed that Mr Allan had knowingly created false records by either using Mr Walker's driver card, Mr Hopkins' driver card, Mr Mathew Hendry's driver card, or by driving without a card.
89. I found Mr Wardrop's analysis and conclusions about Mr Allan's misuse of other driver's cards and driving without a card to be compelling and I considered that Mr Wardrop's conclusions are correct.
90. I am required to decide (1) whether Mr Allan's conduct is such as to make him unfit to hold an LGV licence, (2) if Mr Allan is unfit to hold an LGV licence should I revoke or suspend his LGV licence, and (3) if I decide to revoke his LGV licence if Mr Allan should be disqualified and if so for what period (s.116 and s.117 of the Road Traffic Act 1988).
91. I am satisfied that Mr Allan's conduct is such as to make him unfit to hold an LGV licence. I am satisfied that I should revoke his LGV licence with effect from 23:59 Friday 8 May 2020. I determine that Mr Allan should be disqualified for a period of 3 years 6 months. My reasoning is set out below.
92. I have had regard to the Senior Traffic Commissioner's Statutory Document No. 6 Vocational Driver Conduct in considering how to dispose of this case. Paragraph 77 states:-
"77. Traffic Commissioners are likely to regard the falsification as more serious than the offence that it may be designed to conceal. Those who commit offences of this kind must understand that there will be serious consequences if and when the matter comes to light. A cumulative and significant period of disqualification which reflects the offence that has been subject to concealment, the falsification of records and/or use of a manipulation device, is the likely outcome. Subsequent conduct is also likely to be of limited weight."
93. Annex A suggests that the starting point for using a digicard belonging to another is a 4 week suspension for up to 6 offences and revoke and disqualify for 12 months for more than 6 offences.
94. Taking all of these factors into account I am satisfied that Mr Allan is not fit to hold a LGV licence. A consequence of that finding is that I must suspend or revoke his LGV licence. I am satisfied that suspension or revocation is a proportionate response to Mr Allan's behaviour. In this case, taking into account the Statutory Document, I am satisfied that suspension would not be an adequate response to the seriousness of Mr Allan's behaviour. The frequent use of three other drivers' cards over a substantial period of time (28 occasions in 12 months) mean that I must revoke Mr Allan's LGV licence

and disqualify him for a substantial period of time – well in excess of the starting point of more than a year. I consider that given the level of Mr Allan’s use of other drivers’ card to Mr Allan’s financial benefit, and the requirement to deter others from committing similar offences it is appropriate for Mr Allan to be disqualified from holding a LGV licence for 3 years and 6 months.

SCOTT WALKER – DRIVER

95. Mr Scott Walker did not attend the Driver Conduct Hearing. I considered whether I should adjourn the DCH to allow Mr Walker to attend. Mr Walker emailed the OTC Edinburgh just after 9 am on the day of the DCH. He stated:-

“Due to the nature of the job I’m doing today I won’t be able to attend the hearing unfortunately. I understand it will still be going ahead.

My card was never bought the money from Bryce was to help me with a deposit.

I had no idea the card was getting used i drove 3 times for Bryce and that is all any other record of my card is not from myself.

If I lose my HGV entitlement it will put my job at risk. I’m a single father I would be more than willing to pay a fine if somehow I can keep my entitlement for my HGV. I have an unblemished record as your records will show.

Sorry for any inconvenience caused...”

96. I am satisfied that in the circumstances work commitments are not a sufficient reason to adjourn Mr Walker’s DCH. Mr Wardrop summarises at pages 6 to 10 his contact with Mr Walker.

97. On the day of the roadside encounter, 7 January 2019 Mr Wardrop had spoken to the driver, Mr William Allan about whether or not Mr Allan had used Mr Walker’s card. Mr Allan said that he had not. At the end of the check Mr Wardrop went to Mr Walker’s home address. Mr Walker was not at home but Mr Wardrop was given Mr Walker’s mobile number. Mr Wardrop phoned the number and left a voicemail. Later Mr Wardrop did speak to Mr Walker. Mr Wardrop asked Mr Walker where his driver card was. Mr Walker said it should have been in his wallet but it was not so it must be in his office or in his house. They arranged that Mr Walker would be interviewed the next day, 8 January 2019 at 2 pm. The next day Mr Walker phoned Mr Wardrop and the interview was rearranged for the 11 January 2019.

98. At interview on 11 January 2019 Mr Walker explained that he was a full time manager of an asphalt company. Mr Walker said that he had driven for Mr Hopkins once or twice in November 2018 and once in December 2018. Mr Wardrop showed Mr Walker the activity on his driver card. Mr Walker denied doing all the driving and said that he only worked for Mr Hopkins at weekends. Mr Wardrop pointed out that a new driver card had been issued to Mr Walker on 27 October 2018 because Mr Walker said he had lost his

driver card and that it was then used on Monday 5 November 2018 in one of Mr Hopkins' vehicles at a time.

99. On 17 January 2019 Mr Wardrop received a text message from Mr Walker stating:-

“Regarding all that’s going on with My driving card I’d like to say sorry I Panicked it was me who was doing the driving...”

100. After further investigations Mr Wardrop arranged to re-interview Mr Walker on 28 April 2019. Mr Walker was given a copy of the earlier interview to refresh his memory. Mr Wardrop mentioned the text message and asked Mr Walker what his current position was about the driving on his driver card. Mr Walker said:-

“It was clear it wasn’t me. I gave it to Bryan Mair once, vaguely we were on a job. I did give it to him to get him home. It was in Edinburgh somewhere maybe Portobello. I gave him it about 1 November 2018. He used it without my knowledge...”

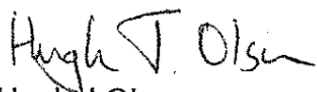
101. Mr Wardrop asked Mr Walker about the fact that Mr Walker’s original driver card had been used before in Mr Hopkins’ vehicles before 27 October 2018. Mr Walker declined to assist with the use of his card. Mr Walker’s card had been used in V31 TAR on 56 occasions from 19 February 2018 to 17 November 2018 (a vehicle normally driven by Bryan Mair) and in YL06 XTX and SK11 GYF (vehicles normally driven by William Allan) on 9 occasions between 1 December 2018 and 21 December 2018.

102. Mr Wardrop identified two issues with Mr Walker:- (1) he appeared to have knowingly allowed his driver card to be used by Mr Mair and Mr Allan, and (2) if he had been driving on some of the occasions when his card was in Mr Hopkins’ vehicles he would have taken insufficient daily rest periods given his full-time occupation.

103. Mr Walker chose not to attend the DCH to explain when he had been driving and when other drivers were using his card. I find, agreeing with Mr Wardrop’s investigation and conclusions as set out in the Driver Conduct Brief, that Mr Walker allowed his card to be used by Mr Mair and Mr Allan on numerous occasions between February 2018 and December 2018. Whether Mr Walker’s card was misused on all 65 occasions or whether, as Mr Walker and Mr Mair claimed, Mr Walker was doing some driving at weekends, it is impossible for me to determine. I consider that I am entitled to infer, as Mr Wardrop did, in the absence of any reliable evidence to the contrary, that Mr Walker is responsible for the misuse of his card on 65 occasions.

104. I am required to decide (1) whether Mr Walker’s conduct is such as to make him unfit to hold an LGV licence, (2) if Mr Walker is unfit to hold an LGV licence should I revoke or suspend his LGV licence, and (3) if I decide to revoke his LGV licence if Mr Walker should be disqualified and if so for what period (s.116 and s.117 of the Road Traffic Act 1988).

105. I am satisfied that Mr Walker's conduct is such as to make him unfit to hold an LGV licence. I am satisfied that I should revoke his LGV licence with effect from 23:59 Friday 8 May 2020. I determine that Mr Walker should be disqualified for a period of 7 years. My reasoning is set out below.
106. I have had regard to the Senior Traffic Commissioner's Statutory Document No. 6 Vocational Driver Conduct in considering how to dispose of this case. Paragraph 77 states:-
"77. Traffic Commissioners are likely to regard the falsification as more serious than the offence that it may be designed to conceal. Those who commit offences of this kind must understand that there will be serious consequences if and when the matter comes to light. A cumulative and significant period of disqualification which reflects the offence that has been subject to concealment, the falsification of records and/or use of a manipulation device, is the likely outcome. Subsequent conduct is also likely to be of limited weight."
107. Annex A suggests that the starting point for using a digicard belonging to another is a 4 week suspension for up to 6 offences and revoke and disqualify for 12 months for more than 6 offences.
108. I have found that Mr Walker allowed his driver card to be misused on 65 occasions.
109. Taking all of these factors into account I am satisfied that Mr Walker is not fit to hold a LGV licence. A consequence of that finding is that I must suspend or revoke his LGV licence. I am satisfied that suspension or revocation is a proportionate response to Mr Walker's behaviour. In this case, taking into account the Statutory Document, I am satisfied that suspension would not be an adequate response to the seriousness of Mr Walker's behaviour. I consider that the frequency with which Mr Walker allowed his card to be misused and the substantial time over which this took place (65 occasions over just under a year) mean that I must revoke Mr Walker's LGV licence and disqualify him for a substantial period of time – well in excess of the starting point of more than a year. I consider that Mr Walker's conduct is at least as bad as Mr Mair's. In the circumstances I find that it is appropriate for Mr Walker to be disqualified from holding a LGV licence for 7 years.



Hugh J Olson

Deputy Traffic Commissioner for Scotland

08/04/2020