



# SENIOR TRAFFIC COMMISSIONER

Statutory Document No.11

## WRITTEN REASONS, DECISIONS AND PUBLICATION

This document is issued pursuant to section 4C of the Public Passenger Vehicles Act 1981 (as amended). Representative organisations have been consulted in accordance with that provision.

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<b>Issued:</b>	

Senior Traffic Commissioner

4 December 2011

## GUIDANCE

1. This guidance is issued to assist traffic commissioners in the exercise of their statutory functions and in particular in relation to the timing of written decisions.

### Basis of Guidance

2. The Senior Traffic Commissioner recognises the independence of traffic commissioners in reaching judicial decisions<sup>1</sup>. This guidance deals with the administration and practicalities for making decisions available to interested parties. The principles to be employed when reaching decisions are set out elsewhere<sup>2</sup>. The provisions for a review of decisions are also set out elsewhere<sup>3</sup>.
3. A predominant function of traffic commissioners is to act as a single person tribunal, dealing with hearings, interlocutory decisions, and matters ancillary to the judicial process. As such, in common with all tribunals, there is an obligation to issue decisions promptly<sup>4</sup>.
4. The majority of decisions made by traffic commissioners, following a public inquiry, are therefore delivered orally and on the day of the hearing. A traffic commissioner, however, may decide that the interests of justice require a decision to be explained in writing. The timescales suggested below are subject to the availability of resources and other exceptional circumstances which might impact on the availability of the traffic commissioner or dictate other priorities. Those timescales exclude impounding cases where the legislation provides a specific timetable. Where there is a hearing within 14 days of its conclusion and where there is no hearing the decision should be communicated within 21 days of receiving the application<sup>5</sup>. Those timescales are subject to extension where the traffic commissioner considers it necessary in the interests of justice and fairness in the particular case<sup>6</sup>.

### Case Law

5. This Guidance is subject to any decisions of the higher courts and to subsequent legislation. The Senior Traffic Commissioner, however, has extracted the following principles from existing case law.

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<sup>1</sup> Human Rights Act 1998, see Statutory Guidance and Statutory Directions on Case Management

<sup>2</sup> See Statutory Guidance and Statutory Directions on the Principles of Decision Making

<sup>3</sup> See Statutory Guidance and Statutory Directions on Appeals

<sup>4</sup> Section 6 Human Rights Act 1998, *Al-Le Logistics Limited* [2010] EWHC 134 (Admin), and the Transport Tribunal decision in *AM Richardson* (2000/65).

<sup>5</sup> Regulation 12 of the Goods Vehicle (Enforcement Powers Regulations) 2001 as amended, and regulation 13 of the Public Service Vehicle (Enforcement Powers) Regulations 2009.

<sup>6</sup> Regulation 23 of the Goods Vehicle (Enforcement Powers Regulations) 2001 as amended, and regulation 25 of the Public Service Vehicle (Enforcement Powers) Regulations 2009.

6. The Upper Tribunal has reminded traffic commissioners that what matters most is “what the traffic commissioner thinks and why he thinks it” and that “they should not feel constrained to include standard paragraphs and phrases in their decisions”<sup>7</sup>. Numerous appeal decisions repeat the need for sufficient written reasons in the record of traffic commissioner’s decisions<sup>8</sup>. A written decision or reasons can be used to subsequently correct a decision<sup>9</sup>. The power to correct a written decision is more limited but certainly extends to typographical and factual errors such as a numerical correction but requires an explanation. It can happen that a feature of the evidence which had not received much attention at the hearing strikes a traffic commissioner, who has reserved the decision, as being important. It is entirely a matter of discretion and fairness whether the tribunal can rely on that feature without hearing further evidence or argument, and it is difficult to suggest any general rule on the topic<sup>10</sup>.
7. Long delays between the hearing of evidence at a public inquiry and the publication of a written decision should generally be avoided<sup>11</sup> and members of staff supporting traffic commissioners are expected to adopt systems to support traffic commissioners to minimise the risk of this happening. The decisions themselves are directed to operators who will be well aware of the issues involved and the arguments advanced<sup>12</sup>. Each case will turn on its own facts, with “the degree of particularity required depending on the nature of the issues falling for decision”.
8. The reasoning relied upon should be set out in any full written decision. A traffic commissioner has to consider the evidence carefully and then give reasons if he or she is going to reject it. It is not enough to refer to evidence and then move straight to a conclusion<sup>13</sup>. In many cases there will be no need to explain the relevance of a particular factor in the decision because it will only need to be stated for its relevance to be apparent, but where there is any doubt as to whether or not a factor is relevant the traffic commissioner should explain why he or she considers it to be relevant<sup>14</sup>. A traffic commissioner should make an assessment of the nature, number and gravity of any breaches and the steps taken by the operator to prevent breaches, which should be set out in the decision as well as the weight given, for instance, to the operator’s general record, performance, reputation and enforcement history<sup>15</sup>. It should be possible to determine from the decision which matters were taken into account by the traffic commissioner, the weight placed upon those matters and whether the appropriate balancing exercise was carried out

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<sup>7</sup> 2010/071 Eurofast (Europe) Ltd and others

<sup>8</sup> Al-Le Logistics (as above)

<sup>9</sup> 2001/77 Wilton Contracts

<sup>10</sup> 1999/L56 Alison Jones t/a Jones Motors, Shamrock Coaches, and Thomas Motor Services

<sup>11</sup> 2005/523 Swallow Coach Company

<sup>12</sup> South Bucks District Council & Another v. Porter (No.2) [2004] UKHL 33, (2004 1WLR 1953

<sup>13</sup> 2000/057 Yorkshire Rider Ltd

<sup>14</sup> 2007/104 S Lloyd

<sup>15</sup> 2002/1 Bryan Haulage Ltd (No1)

9. Traffic commissioners need to ensure sufficient detail to allow a person with experience of the relevant industry to understand the basis upon which the decision was arrived at. Even in a 'bad case' where the operator could not have failed to understand why the traffic commissioner came to the particular conclusion the absence of a written decision has been criticised<sup>16</sup>. The approach, however, that whenever an operator's licence is to be revoked a written decision should accompany or follow any oral determination does not appear to be necessary in every case<sup>17</sup>. However it would be normal to provide a written decision where revocation (or other strong regulatory action) follows a lengthy public inquiry<sup>18</sup>. Reasons should be given for any conclusion. The intentions of the traffic commissioner and the effect on the party(s) should be equally clear<sup>19</sup> and any relevant matters such as the burden of proof should be accurately described but may not be fatal to the validity of a decision<sup>20</sup>. In more complicated cases this may only be possible by putting that reasoning in writing.
10. The general rule is that a final decision of a traffic commissioner cannot be re-opened except by way of lawful appeal, but the rule applies only after the written decision has been drawn up and issued. It is also subject to two exceptions: where there has been a slip in drawing up the decision (and many jurisdictions have a 'slip rule' to allow for rectification), and where, for some other reason, it is established that the document does not properly and accurately convey what the traffic commissioner clearly and manifestly intended or indicated that it should say<sup>21</sup>.

### **Oral Decisions**

11. In the majority of cases it is desirable to issue decisions orally at the public inquiry, together with accompanying reasons and reference to the individual sections of the legislation that the traffic commissioner has found are made out. Whilst traffic commissioners should avoid the perception that a decision has been reached in haste or of pre-determination<sup>22</sup> it is envisaged that this practice will continue in the majority of straightforward cases. The actual decision will always be confirmed in writing, which will also explain the right of appeal.

### **Written Confirmation of the Traffic Commissioner's oral decision**

12. In certain cases, however, following the issue of an oral decision, a traffic commissioner may indicate that he/she will issue a written copy of the decision and accompanying reasons to ensure that all parties and any interested parties understand the reasons for a decision and its implications. This written record may also be of great benefit to any traffic commissioner who deals with the operator (or a linked operator) at a subsequent public inquiry.

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<sup>16</sup> 2009/08 William Ball T/a Severn Valley Transport Appeal

<sup>17</sup> 2010/13 Malcolm Thomas Berry, 2010/036 Suzanne Stoneman t/a Keith Travel

<sup>18</sup> 2010/067 Pemberton Transport

<sup>19</sup> 2008/780 South Lincs Plant Hire & Sales

<sup>20</sup> 2010/040 Rowlands Telecoms Ltd in contrast to 2009/204 Michael John Verrechia

<sup>21</sup> 2011/043 DA Lewis UPV Installations Ltd & Another

<sup>22</sup> 2010/067 Pemberton Transport Ltd

13. Traffic commissioners will aim to issue those written reasons within ten days of the public inquiry. As a courtesy any party awaiting a written decision should be kept informed on any actual or anticipated delays.

### **Full Written Reasons**

14. Traffic commissioners recognise that there will be certain cases in which a written decision, recording relevant evidence, considerations and findings, will be necessary following a public inquiry or a driver conduct hearing.
15. Accordingly, the Senior Traffic Commissioner endorses the practice that in cases where a decision is reserved, traffic commissioners endeavour to publish full written reasons no later than 28 days from the date of the final hearing, except in cases where a full transcript or part transcript is required. In the latter case, the target date for publication is 28 days after the transcript becomes available. The Senior Traffic Commissioner recognises that it might be necessary to put conditions in writing to a party after the hearing and to seek comments and/or agreement. In those circumstances the timetable starts with date of confirmation.
16. Where a traffic commissioner is unable to adhere to the suggested timescales, those supporting the traffic commissioner are expected to provide additional resources so that the particular traffic commissioner can prioritise the production of the full written reasons.
17. Should the relevant decision be delayed for a further period of more than 14 days after the original 28 day period, the traffic commissioner concerned or the senior team leader for that commissioner should notify the Senior Traffic Commissioner accordingly.
18. The Senior Traffic Commissioner recognises that these timescales are dependant on available resources. The Senior Traffic Commissioner will therefore work with the traffic commissioner concerned to ensure that arrangements are made for the delayed decision to be published as soon as is reasonably practicable. This may include, for example, inviting the traffic commissioner concerned to assign a deputy traffic commissioner to deal with their public inquiries so as to allow them sufficient time for the issue of the full written reasons.

### **Format of traffic commissioners' written decisions**

19. In respect of standard licences Regulation (EC) 1071/2009 requires that the name of any person declared to be unfit to manage the transport activities of an undertaking (as long as the good repute of that person has not been re-established etc) and any applicable rehabilitation measures, to be recorded on the National Electronic Register. Regulation (EC) 1213/2010 requires Member States from 31<sup>st</sup> December 2012 to ensure that there is inter-connectivity between the various National Registers. The Register will therefore record where such action is taken by a traffic commissioner but due to the limitations on the National Electronic Register the entry will simply refer to the published full written reasons.

20. A template has been designed to provide a general approach to the format of written decisions, which are published by the traffic commissioners. That template is attached at Annex 1.

### **Redaction of all or part of published decisions**

21. Generally traffic commissioners will issue the whole of their decision which will consequently be in the public domain. However this will be subject to the provisions that apply with regard to traffic commissioners having a power to hear the whole or part of any inquiry in private.

Paragraph 2 of Schedule 4 of the Goods Vehicles (Licensing of Operators) Regulations 1995 provides the following:

(2) The traffic commissioner may direct that the whole or any part of an inquiry be held in private if he is satisfied that by reason of –

- (a) the likelihood of disclosure of intimate personal or financial circumstances;
- (b) the likelihood of disclosure of commercially sensitive information or information obtained in confidence; or
- (c) exceptional circumstances not falling within sub-paragraphs (a) or (b),

it is just and reasonable for him to do so.

- (3) Where the hearing is in private the traffic commissioner may admit such persons as he considers appropriate.
- (4) Without prejudice to sub-paragraph (2), where any question relating to the appropriate financial resources of any persons is to be or is being considered during an inquiry, the traffic commissioner may exclude such persons as he thinks fit from the part of the inquiry during which that question is considered.
- (5) Notwithstanding the foregoing provisions of this paragraph, a member of the Council on Tribunals or the Scottish Committee of that Council may be present in his capacity as such notwithstanding that the inquiry or part of an inquiry is not in public and such a person shall not be excluded under sub-paragraph (4).

Paragraph 7 of The Public Service Vehicles (Traffic Commissioners: Publication and Inquiries) Regulations 1986 provides the following:

A traffic commissioner may restrict in such manner as he directs attendance of the public at any inquiry so far as that inquiry relates to the financial position of any person, provided that a member of the Council on Tribunals or its Scottish Committee shall be entitled to attend notwithstanding that attendance is restricted.

22. It therefore follows that where a traffic commissioner has heard all or part of the evidence given at the public inquiry in private that the traffic commissioner must give careful consideration as to whether it is appropriate to redact all or part of the decision. In general terms the traffic commissioner will be likely to redact those parts of the decision that refer to evidence given in private and consequently that should not go into the public domain.
23. Furthermore the legislation requires traffic commissioners to process personal data (within the meaning of the Data Protection Act 1998). The processing<sup>23</sup> of personal data<sup>24</sup> must comply with the Data Protection Act and therefore the eight Data Protection Principles. The categories of personal data that are processed might include “*sensitive data*” i.e. information such as names, addresses, telephone numbers, employment activities, convictions, financial details, mental capacity and any other information that may be submitted by applicants, licence holders or candidates, or considered by traffic commissioners, in order to fulfil their statutory duties. Personal data processed for the purposes of regulation is not subject to subject information limiting disclosure<sup>25</sup>. The non-disclosure provisions do not apply where disclosure is required by law or in connection with legal proceedings<sup>26</sup>. In reaching a decision traffic commissioners should only refer to what is required for their lawful purposes.
24. Traffic commissioners will be concerned to ensure that arrangements are in place so that relevant personal data is accurate and processed properly. The Senior Traffic Commissioner has therefore adopted a general approach in both goods and passenger cases that sensitive information that is personal financial information shall only be given with only the operator and nominated representative(s) present. There may be occasions, however, where it is necessary to hear some related evidence in public and to refer to a document such as a bank statement where, for instance, it is alleged to have been altered.
25. In goods cases the traffic commissioner will also have to give careful consideration as to whether it is necessary to redact those parts of the decision that relate to evidence given in private in accordance with paragraphs 2(2)b and 2(2)c of the 1995 Regulations. The Senior Traffic Commissioner does not consider it appropriate to issue general guidance in this matter as each case will turn upon its facts.
26. In completing a decision with full written reasons it should not be necessary to complete a second version of the decision. The traffic commissioner should ensure that any sensitive sections which they require to be removed from the publicly available version of the decision should be placed in bold text written between square brackets. Whilst the full decision will of course be made available to the subject(s) of the public inquiry or hearing or anyone requesting a

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<sup>23</sup> “Processing” is defined as including “obtaining, recording or holding”, “organising, adapting or altering”, “retrieving, consulting or using”, “disclosing, disseminating or making available”, and “aligning, combining, blocking, erasing or destroying” data.

<sup>24</sup> “Personal data” is defined under the DPA as “data which relate to a living individual who can be identified ... from those data, or ... from those data and other information which is in the possession of, or is likely to come into possession of, the data controller”.

<sup>25</sup> Section 31

<sup>26</sup> Section 35

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copy, the traffic commissioner should take all reasonable steps to ensure that only the redacted decision is placed into the public domain. The attached template provides suggested wording for the traffic commissioner to adopt.

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## ANNEX 1 - WRITTEN DECISION TEMPLATE

The following is not mandatory as the format of any decision may depend largely on the issues under consideration. It is offered as a prompt to remind the traffic commissioner of the broad headings which he or she might wish to include in a written decisions and of the preferred approach to the redaction of written decisions, as referred to at paragraph 21.



IN THE XXXXXXXX TRAFFIC AREA  
DECISION OF THE DEPUTY/TRAFFIC COMMISSIONER

NAME OF OPERATOR

AND ANY OTHER PARTY

LICENCE NUMBER

**Decision**

To be used if the decision contains confidential information:

**THIS DECISION CONTAINS CONFIDENTIAL INFORMATION. THE RELEVANT SECTIONS INDICATED IN BOLD AND BETWEEN SQUARE BRACKETS ARE NOT TO BE PUBLISHED WITHOUT THE PERMISSION OF THE PRESIDING COMMISSIONER**

**Background**

Type of licence, level of authority, type of entity, previous history

**Public Inquiry**

Call up letter (there is no need to rehearse all of the issues)  
Where, when, who attended.

**The Evidence**

Refer to those matters considered particularly any documents not included in the brief,  
Oral evidence - VOSA, the operator and any other witnesses,

**Findings of fact**

Where necessary describe the weight attached or why a particular version may be preferred.

**Findings regarding breaches of the legislation**

**Relevant considerations**

Including a description of the balancing exercise and matters considered

**Decision**

To include any directions made.

*(Name of presiding traffic commissioner)*  
Deputy/Traffic Commissioner *(delete as applicable)*  
*(date)*

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## **ANNEX 2: EU LEGISLATION**

Regulation 5 of the Road Transport Operator Regulations 2011 states that a standard licence constitutes an authorisation to engage in the occupation of road transport operator for the purposes of:

**Regulation (EC) 1071/2009 establishing common rules concerning conditions to be complied with to pursue the occupation of road transport operator repealed Council Directive 96/26 EC and applicable from 4<sup>th</sup> December 2011**

### **Article 15 - Decisions of the competent authorities and appeals**

1. Negative decisions taken by the competent authorities of the Member States pursuant to this Regulation, including the rejection of an application, the suspension or withdrawal of an existing authorisation and a declaration of unfitness of a transport manager, shall state the reasons on which they are based.

Such decisions shall take account of available information concerning infringements committed by the undertaking or the transport manager which are such as to detract from the good repute of the undertaking and of any other information at the disposal of the competent authority. They shall specify the rehabilitation measures applicable in the event of the suspension of an authorisation or a declaration of unfitness.

### **Article 16 - National electronic registers**

1. For the purposes of the implementation of this Regulation, and in particular Articles 11 to 14 and Article 26 thereof, each Member State shall keep a national electronic register of road transport undertakings which have been authorised by a competent authority designated by it to engage in the occupation of road transport operator. The data contained in that register shall be processed under the supervision of a public authority designated for that purpose. The relevant data contained in the national electronic register shall be accessible to all the competent authorities of the Member State in question.

2. National electronic registers shall contain at least the following data:

- (a) the name and legal form of the undertaking;
- (b) the address of its establishment;
- (c) the names of the transport managers designated to meet the conditions as to good repute and professional competence or, as appropriate, the name of a legal representative;
- (d) the type of authorisation, the number of vehicles it covers and, where appropriate, the serial number of the Community licence and of the certified copies;
- (e) the number, category and type of serious infringements, as referred to in Article 6(1)(b), which have resulted in a conviction or penalty during the last 2 years;
- (f) the name of any person declared to be unfit to manage the transport activities of an undertaking, as long as the good repute of that person has not been re-established pursuant to Article 6(3), and the rehabilitation measures applicable.

For the purposes of point (e), Member States may, until 31 December 2015, choose to include in the national electronic register only the most serious infringements set out in Annex IV.

Member States may choose to keep the data referred to in points (e) and (f) of the first subparagraph in separate registers. In such a case, the relevant data shall be available upon request or directly accessible to all the competent authorities of the Member State in question. The requested information shall be provided within 30 working days of receipt of the request. The data referred to in points (a) to (d) of the first subparagraph shall be publicly accessible, in accordance with the relevant provisions on personal data protection.

In any case, the data referred to in points (e) and (f) of the first subparagraph shall only be accessible to authorities other than the competent authorities where they are duly endowed with powers relating to supervision and the imposition of penalties in the road transport sector and their officials are sworn to, or otherwise are under a formal obligation of, secrecy.

3. Data concerning an undertaking whose authorisation has been suspended or withdrawn shall remain in the national electronic register for 2 years from the expiry of the suspension or the withdrawal of the licence, and shall thereafter be immediately removed.

Data concerning any person declared to be unfit for the occupation of road transport operator shall remain in the national electronic register as long as the good repute of that person has not been re-established pursuant to Article 6(3). Where such a rehabilitation measure or any other measure having an equivalent effect is taken, the data shall be immediately removed.

The data referred to in the first and second subparagraphs shall specify the reasons for the suspension or withdrawal of the authorisation or the declaration of unfitness, as appropriate, and the corresponding duration.