



# SENIOR TRAFFIC COMMISSIONER

## Statutory Document No.10

### THE PRINCIPLES OF DECISION MAKING & THE CONCEPT OF PROPORTIONALITY

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. The Senior Traffic Commissioner for Great Britain issues the following Guidance under section 4C(1) of the Public Passenger Vehicles Act 1981.

### **Basis of Guidance**

2. This guidance is issued under section 4C(1)(a) of the 1981 Act to provide information as to the way in which the Senior Traffic Commissioner believes that traffic commissioners should interpret the law in relation to the making of decisions, the holding of public inquiries and the fairness of proceedings<sup>1</sup>. This Guidance may be subject to decisions of the higher courts and to subsequent legislation. The Senior Traffic Commissioner, however, has extracted the following principles from existing legislation and case law.
3. The responsibility for taking action under the relevant legislation is vested in the individual traffic commissioner dealing with a case. That responsibility cannot properly be fettered, and the Public Passenger Vehicles Act 1981 and the Goods Vehicles (Licensing of Operators) Act 1995 both make it clear that a presiding commissioner may hold such an inquiry as he or she thinks necessary for the proper exercise of his or her functions<sup>2</sup>. Whilst there is a strong argument in favour of consistency of approach this should not be mistaken for uniformity of decisions and consistency must not be pursued at the expense of the merits of individual cases. Traffic commissioners act as a single person tribunal. They therefore exercise their discretion with regard to the principle of proportionality as enshrined in British, European and human rights law<sup>3</sup>. The independence and impartiality of traffic commissioners is guaranteed as part of the obligations on the State<sup>4</sup>.
4. The legislation exists to ensure the promotion of road safety and fair competition and traffic commissioners will have regard to the relevant decisions of the higher courts and the principle of proportionality in deciding what intervention is commensurate with the circumstances of each individual case<sup>5</sup>. Where there has been non-compliance traffic commissioners must have regard to the potential impact on an operator of any regulatory action and make an assessment of the operator as at the date of the decision.

### **Goods Vehicles Legislation: The Goods Vehicles (Licensing of Operators) Act 1995**

5. Section 35 of the Act provides that it is for the traffic commissioner to decide whether a public inquiry is necessary for the proper exercise of the commissioner's functions under the Act and may decide to join two or more cases in one hearing<sup>6</sup>.

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<sup>1</sup> See also specific guidance etc: Statutory Guidance and Statutory Directions on Impounding; Statutory Guidance and Statutory Directions on Vocational Driver Conduct

<sup>2</sup> See Statutory Guidance and Statutory Directions on Case Management for further references regarding independence.

<sup>3</sup> Human Rights Act 1998

<sup>4</sup> Al-Le Logistics Limited etc [2010] EWHC 134 (Admin) paragraph 92 and 2000/065 AM Richardson

<sup>5</sup> 2002/217 Bryan Haulage (No 2) (Transport Tribunal Appeal), Muck It Limited and Others v Secretary of State for Transport [2005] EWCA Civ 1124 and Crompton v Department for Transport North West Area [2003] EWCA Civ 64, Priority Freight Limited and Paul Williams (Transport Tribunal appeal 2009/225).

<sup>6</sup> 2011/364 Heart of Wales Bus & Coach Co Ltd and C Jones

6. Any hearing will normally be in public subject to the circumstances arising set out in paragraph 7 below.
7. Paragraph 2 of Schedule 4 of the Goods Vehicles (Licensing of Operators) Regulations 1995 provides the following:

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.

Where the hearing is in private the traffic commissioner may admit such persons as he considers appropriate.

Without prejudice to the above, 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.

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).

8. Regulation 20 of the Goods Vehicles (Licensing of Operators) Regulations 1995 applies Schedule 4 of those Regulations in respect of an inquiry held by a traffic commissioner. This allows the presiding traffic commissioner to determine the procedure at an inquiry. A person entitled to appear at an inquiry is entitled to give evidence, to call witnesses, to cross examine witnesses and to address the traffic commissioner both on the evidence and generally. The traffic commissioner, however, may refuse to permit (a) the giving or calling of evidence; (b) cross examination of persons giving evidence; or (c) the presentation of any other matter, which the traffic commissioner considers to be irrelevant, repetitious, frivolous or vexatious. The presiding traffic commissioner may exclude a person who, in the opinion of the traffic commissioner, is behaving in a disruptive manner. A traffic commissioner may proceed with an inquiry in the absence of any person entitled to appear if the traffic commissioner is satisfied that it is fair to do so, proper notice having been given. Any person present at an inquiry may submit any written evidence or other matter in writing before the close of the inquiry. A traffic commissioner may not take into account any written evidence or other matter in writing received by him from any person before an inquiry opens or during any inquiry unless the traffic commissioner discloses it.

9. Section 27 of the Act requires a traffic commissioner to revoke a standard licence if at any time it appears that the licence-holder no longer meets the requirements of section 13A(2), i.e. (a) has an effective and stable establishment in Great Britain, (b) is of good repute, (c) has appropriate financial standing, and d) is professionally competent; or the transport manager does not meet the requirements of section 13A(3), i.e. (a) is of good repute, (b) is professionally competent, and (c) is not prohibited from being appointed as a transport manager.
10. Section 26 of the Act allows a traffic commissioner to direct, at his or her discretion, that an operator's licence be revoked, suspended or curtailed on grounds that can be summarised as follows:
- (a) use of an unauthorised site as an operating centre;
  - (b) contravention of a licence condition;
  - (c) that during the last five years there has been;
    - (i) a relevant conviction<sup>7</sup> of the licence-holder;
    - (ii) a relevant conviction of a servant or agent of the licence holder<sup>8</sup>;
    - (iii) a prohibition in respect of an unfit or overloaded vehicle;
  - (ca) fixed penalty or conditional offer issued
  - (d) that during the last five years, there have been numerous convictions of the licence-holder or a servant or agent of his of offences set out in paragraph 5(j) of Schedule 2<sup>9</sup>
  - (e) that the licence-holder made, or procured to be made, for the purposes of his application, an application for the variation of the licence, or a Schedule 4 application, a statement of fact that, whether to his knowledge or not, was false, or has not been fulfilled;
  - (f) that any undertaking recorded in the licence has not been fulfilled;
  - (g) that an individual licence-holder has been adjudged bankrupt or, a company holding a licence has gone into liquidation (excluding voluntary liquidation);
  - (h) that since the licence was issued or varied there has been a material change in the circumstances of the licence-holder that were relevant to the issue or variation.
  - (i) that the licence is liable for revocation, suspension, curtailment following a direction under section 28 (4)
11. The offences set out at (d) above are –
- (a) an offence under section 53 of the Road Traffic Act 1988 (plating certificates and goods vehicle test certificates);
  - (b) an offence committed in relation to a goods vehicle consisting in the contravention of any provision (however expressed) contained in or having effect under any enactment (including any enactment passed after this Act) relating to –
    - (i) the maintenance of vehicles in a fit and serviceable condition;
    - (ii) limits of speed and weight laden and unladen, and the loading of goods vehicles; or
    - (iii) the licensing of drivers;

<sup>7</sup> See Statutory Guidance and Statutory Directions on Good Repute and Fitness

<sup>8</sup> As above

<sup>9</sup> see Annex 5

(c) an offence under –

- (i) this Act;
- (ii) Part V of the Transport Act 1968 or section 233 or 235 of the Road Traffic Act 1960 so far as applicable (by virtue of Schedule 10 to the 1968 Act) to licences or means of identification under that Part;

12. The condition on the licence imposes an obligation on the licence holder to inform the traffic commissioner of any change in the following requirements for a standard licence: transport manager, stable and effective establishment, financial standing. The traffic commissioner has discretion to grant a period of grace in respect of each of these requirements, see paragraph 62 below.
13. In the event of curtailment or suspension, the traffic commissioner may make a direction under section 26(6) that in effect any motor vehicle specified on the licence may not be used under any other operator's licence.
14. Section 28 of the Goods Vehicles (Licensing of Operators) Act 1995 enables the disqualification of a person from holding an operator's licence to be varied or cancelled, and it is open to any such person to make application to the traffic commissioner to vary an order. Paragraph 16(2) of Schedule 3 of the Goods Vehicles (Licensing of Operators) Act 1995 provides that where a traffic commissioner determines that the transport manager is no longer of good repute the traffic commissioner must order the disqualification of that transport manager but paragraph 17 allows the traffic commissioner to cancel or (with the consent of the disqualified person) to vary the order and to specify measures with which the disqualified person must comply before the order can be cancelled or varied.

### **Passenger Carrying Vehicles Legislation: The Public Passenger Vehicles Act 1981**

15. Section 54 of the Act enables traffic commissioners to hold such public inquiries as they think fit in connection with the exercise of their functions. It also gives traffic commissioners discretion as to where to hold such public inquiries and to join two or more cases in one hearing. It imposes a requirement in respect of proper notification of a hearing and provides that public inquiries shall be held in public subject to the circumstances arising set out in paragraph 15 below. It should also be read in conjunction with Regulation 6 referred to at paragraph 16 below.
16. 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.

- 17.** Regulation 6 of the Public Service Vehicles (Operators' Licences) Regulations 1995 provides that a traffic commissioner shall not refuse an application for a licence, or grant it other than as requested, without giving the applicant an opportunity to state his or her case at an inquiry, save where the application or the applicant's conduct in relation to it is frivolous or unreasonable.
- 18.** Section 17(1) of the Act requires a traffic commissioner to revoke a standard licence if at any time it appears that the licence-holder no longer meets the requirements of section 14ZA(2), i.e. (a) has an effective and stable establishment in Great Britain, (b) is of good repute, (c) has appropriate financial standing, and d) is professionally competent; or the transport manager does not meet the requirements of section 14ZA(3), i.e. (a) is of good repute, (b) is professionally competent, and (c) is not prohibited from being appointed as a transport manager.
- 19.** Section 17(2) allows a traffic commissioner to direct that an operator's licence be revoked, suspended or curtailed on the grounds in section 17(3) that can be summarised as follows:

  - (a) that the licence-holder made, or procured to be made, for the purposes of his application, an application for the variation of the licence, or a Schedule 4 application, a statement of fact that, whether to his knowledge or not, was false, or has not been fulfilled;
  - (aa) that any undertaking recorded in the licence has not been fulfilled
  - (b) that there has been a contravention of any condition attached to the licence;
  - (c) that there has been a prohibition issued under section 69 of the Road Traffic Act 1988 or that the licence holder has been convicted of an offence under section 71(1)(a) or (b);
  - (d) that a restricted licence-holder no longer satisfies the requirements of Section 14ZB, i.e. to be of good repute and/or to be of appropriate financial standing;
  - (e) that since the licence was issued or varied there has been a material change in the circumstances of the licence-holder that were relevant to the issue or variation.
  - (f) that the licence is one where a traffic commissioner has made an order for disqualification pursuant to Section 28(4) of the Transport Act 1985
- 20.** The condition on the licence imposes an obligation on the licence holder to inform the traffic commissioner of any change in the following requirements for a standard licence: transport manager, stable and effective establishment, financial standing. The traffic commissioner has discretion to grant a period of grace in respect of each of these requirements, see paragraph 62 below.
- 21.** Section 28 of the Transport Act 1985 provides for the disqualification of a person from holding an operator's licence and for that disqualification to be varied or cancelled on application to the traffic commissioner. Section 7B of the Public Passenger Vehicles Act 1981 provides that where a traffic commissioner determines that the transport manager is no longer of good repute the traffic commissioner must order the disqualification of that transport manager but section 7C allows the traffic commissioner to cancel or (with the consent of the disqualified person) to vary the order and to specify measures with which the disqualified person must comply before the order can be cancelled or varied.



## Case Law

### *General approach*

22. In essence, the legal principle of proportionality requires a traffic commissioner when exercising a statutory function, to make decisions which are commensurate with the circumstances of each individual case. The primary factor to be considered is the impact on road safety and fair competition arising from the alleged breaches of the legislation by the operator. Traffic commissioners must also have regard to the impact upon an operator of any regulatory action which might be taken in cases of non-compliance.
23. The traffic commissioner is entitled to determine the structure of a public inquiry and the evidence that is to be called provided that the rules of natural justice are safe-guarded<sup>10</sup>.
24. A warning does not constitute a direction within the terms of the legislation and, whilst a direction may not be given without first holding a public inquiry if the holder of the licence requests this, the legislation imposes no requirement to hold a public inquiry before issuing a warning<sup>11</sup>.
25. In the ordinary course of events, a withdrawal of a licence application might be determinative of the matter but where there is evidence to suggest a manipulation of the licensing system, unlawful operation or other conduct which would adversely affect the good repute of the applicant or of those involved with the application, the traffic commissioner has jurisdiction to continue to consider that application<sup>12</sup>. The traffic commissioner is not limited to taking action against those directors in place at the date of the public inquiry but can take action against those persons who were in post as directors at the relevant time<sup>13</sup>.
26. The grant of an interim licence does not give rise to a legitimate expectation such that a traffic commissioner is prevented from taking subsequent action, particularly if made clear that further intervention remains an option<sup>14</sup>.
27. Traffic commissioners are reminded of the helpful guidance given by the Scottish Court of Session when considering the approach to be adopted regarding potential action against a licence holder. *“The underlying purpose for the power provided by Section 26(1) can only be stated in very broad terms, namely that it is intended to be used, so far as may be appropriate, to achieve the objectives of the system. The proper question is whether in that context the direction is appropriate in the public interest. The objectives of the system plainly include the operator’s adherence to the various requirements of section 13(5). In the case of prohibition and conviction it is plain that the protection of the public is a very important consideration.*

*On the other hand, it does not follow that a traffic commissioner is prevented from taking into account, where appropriate, some considerations of a*

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<sup>10</sup> 2003/094 Dawlish Coaches, see Statutory Guidance and Statutory Directions on Case Management

<sup>11</sup> 2008/268 Funstons Ltd

<sup>12</sup> 2002/8 Alcaline Limited

<sup>13</sup> 2008/688 & 745 David Pritchard & Brian Smith

<sup>14</sup> 2006/149 A & C Nowell

*disciplinary nature and doing so in particular for the purpose of deterring the operator or other persons from failing to carry out their responsibilities under the legislation. However, taking such considerations into account would not be for the purpose of punishment per se, but in order to assist in the achievement of the purpose of the legislation. This is in addition to the obvious consideration that a direction may be used to provide direct protection to the public against dangers arising from the failure to comply with the basis on which the licence was granted. Whether or not such disciplinary considerations come into play must depend upon the circumstances of the individual case.*

*...We disagree with the implication which they drew from the legislation that the licensing authority could not reach a proper determination without distinguishing between fault on the part of the driver and fault on the part of the operator. This appears to suggest that the operator is not responsible when the driver is at fault. It is important, in our view, to observe a clear distinction between questions of responsibility and questions of culpability.”<sup>15</sup>*

### *The Burden and standard of proof*

- 28.** Traffic commissioners are reminded that there is a difference in the statutory language between the provisions relating to applications for a new licence and action including suspension, curtailment or revocation of an existing licence. When making an application, the burden is on the applicant to satisfy the traffic commissioner that the requirements are met but when taking action against an existing licence, the burden is on the traffic commissioner to be satisfied that the requirements are no longer met. Section 26 of the Goods Vehicles (Licensing of Operators) Act 1995 and section 17(2) of the Public Passenger Vehicles Act 1981 both provide that a traffic commissioner may direct that a licence be revoked on the grounds outlined above; and under section 27 of the Goods Vehicles (Licensing of Operators) Act 1995 and section 17(1) of the Public Passenger Vehicles Act 1981 that a traffic commissioner shall direct that a licence be revoked “if at any time it appears” that the licence holder “no longer” meets any of the fundamental requirements in contrast to the provisions relating to applications. For revocation to be possible under the discretionary or mandatory provisions it is the traffic commissioner who must be satisfied of the ground of revocation<sup>16</sup>. On the standard of proof the House of Lords has cited with approval the proposition that “*the more serious the allegation the more cogent is the evidence required to overcome the unlikelihood of what is alleged and thus to prove it*”<sup>17</sup>.

### *Proportionality*

- 29.** An operator’s licence gives rise to limited benefits which are property for the purposes of human rights law. Deciding on the appropriateness of any action is therefore different from the sentencing exercise carried out by the criminal courts. Whilst there may be an element of deterrent effect the discounting of penalties or other sentencing practices are discouraged<sup>18</sup>. Nor is it a matter of

<sup>15</sup> Thomas Muir (Haulage) Limited v The Secretary of State for the Environment, Transport and the Regions [1998] Scot CS 13 (25 September, 1998); [1999] SC 86; [1999] SLT 666; (on appeal from 1997 J1)

<sup>16</sup> Muck It Ltd and Others v. Secretary of State for Transport (2005) EWCA Civ 1124 on appeal from 2004/314

<sup>17</sup> Re Dellow’s Will Trusts [1964] 1 WLR 451 at p455 as approved in Re H and R (1996)(1) FLR 80 and Re L (1996)(1) FLR116

<sup>18</sup> 2003/300 Andrews (Sheffield)



just ensuring consistency with other individual cases<sup>19</sup>. The legislation provides no definition of good repute, and so when a traffic commissioner is considering if an individual is of good repute the traffic commissioner can have regard to any matter, but in considering a company's repute the traffic commissioner can have regard to all *material evidence*<sup>20</sup>. In practice these may amount to the same considerations.

- 30.** Where the operator and/or the transport manager has been convicted of a serious offence or incurred a penalty for one of the 'most serious infringements' pursuant to Annex IV of Regulations (EC) 1071/2009 (see Annex 2) the traffic commissioner is obliged to consider that conduct in so far as it relates to repute. Article 6(2)(b) of Regulation (EC) 1071/2009 indicates that the European Commission will draw up a further list of serious infringements indicating categories, types and degrees of seriousness, in addition to the most serious infringements. In the meantime Annex 3 contains useful references to relevant Upper Tribunal case law.
- 31.** Article 6 of Regulation (EC) 1071/2009 also refers to where the operator and/or transport manager has been convicted of a serious criminal offence or incurred a penalty for a serious infringement of Community rules relating to:
- the driving time and rest periods of drivers, working time and the installation and use of recording equipment;
  - the maximum weights and dimensions of commercial vehicles used in international traffic;
  - the initial qualification and continuous training of drivers;
  - the roadworthiness of commercial vehicles, including the compulsory technical inspection of motor vehicles;
  - access to the market in international road haulage or, as appropriate, access to the market in road passenger transport;
  - safety in the carriage of dangerous goods by road;
  - the installation and use of speed-limiting devices in certain categories of vehicle;
  - driving licences;
  - admission to the occupation;
  - animal transport.
- 32.** Traffic commissioners will be aware of the impact of the introduction of this legislation which introduced a subtle change to the approach to good repute requiring a similarity of approach in reaching decisions on the repute of an operator and the repute of a transport manager. Consequently traffic commissioners will have to balance the current guidance from the Upper Tribunal and the effect of Article 6 of Regulation (EC) 1071/2009. Whereas the Upper Tribunal has previously indicated that the ultimate question is not whether the conduct of an operator is so serious as to amount to a loss of repute but whether it is so serious as to require revocation (put simply; "is the conduct such that the operator ought to be put out of business?"<sup>21</sup>) Article 6 of Regulation (EC) 1071/2009 requires that the traffic commissioner *shall determine whether, due to specific circumstances, the loss of good repute*

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<sup>19</sup> 2003/327 The Fox (A1) Ltd

<sup>20</sup> See Statutory Guidance and Statutory Directions on Legal Entities and Statutory Guidance and Statutory Directions on Good Repute and Fitness

<sup>21</sup> 2002/217 Bryan Haulage (no.2)

would constitute a disproportionate response in the individual case. Any such finding shall be duly reasoned and justified. If the traffic commissioner finds that the loss of good repute would constitute a disproportionate response, the traffic commissioner may decide that good repute is unaffected. If the traffic commissioner comes to this conclusion the reasons have to be recorded in the national register.

- 33.** When considering repute generally traffic commissioners should remind themselves that the opportunity for rehabilitation through the completion of specified measures is only available to transport managers. A more detailed examination of the case law as it applies to the repute of transport managers is set out in the relevant Statutory Guidance and Statutory Directions on Transport Managers.
- 34.** There may be cases where it is only necessary to set out the conduct in question to make it apparent that an operator ought to be put out of business. Standard licence holders are required to employ a transport manager. On an application if the applicant fails to meet the statutory requirement of professional competence it will fail to obtain a licence. If there is already a licence and an employee does not meet the requirements of a transport manager, the operator will not be meeting the requirement to be of professional competence and the traffic commissioner has the power to revoke. Whilst issues of proportionality come into play in determining whether there has been a loss of repute those principles have limited application in a case where the operator has failed to have a transport manager as required by the legislation<sup>22</sup>. However it is open to the holder of a standard licence to request a period of grace<sup>23</sup> and a traffic commissioner should consider the potential impact of not allowing a period of grace.
- 35.** A traffic commissioner should consider all the relevant negatives and positives when balancing the relevant factors and so should also carry out an assessment of the weight to be given to all the various competing elements. This also applies to consideration of a transport manager's repute. The Upper Tribunal has imported a preliminary question, namely: how likely is it that this operator will, in future, operate in compliance with the operator's licensing regime? If the evidence demonstrates that it is unlikely then that will, of course, tend to support a conclusion that the operator ought to be put out of business. If the evidence demonstrates that the operator is very likely to be compliant in the future then that conclusion may indicate that it is not a case where the operator ought to be put out of business. Promises are easily made, what matters is whether those promises will be kept: actions speak louder than words<sup>24</sup>. Conditions may be imposed but traffic commissioners may also seek undertakings e.g. as to training, which might be added to the licence and weighed into the balancing exercise. Where an operator has clearly failed to act upon previous advice and/or findings a traffic commissioner is under no obligation to allow further undertakings to be complied with<sup>25</sup>.
- 36.** In cases involving poor maintenance, for example, VOSA may have carried out a recent and/or follow-up inspection before a public inquiry takes place.

<sup>22</sup> *Anglorom Trans (UK) Ltd v Secretary of State for Transport* [2004] EWCA Civ 998 (30 July 2004 on appeal from 2003/343), see Statutory Guidance and Statutory Directions on Transport Managers

<sup>23</sup> See Statutory Guidance and Statutory Directions on Case Management at paragraph 63

<sup>24</sup> 2009/225 *Priority Freight Ltd & Paul Williams*

<sup>25</sup> 2010/076 *Premier Beds Ltd*

Findings must be made as at the date of the public inquiry and should take into account the improvements made by the operator and any operator's good compliance record. Balancing all these matters against the consequences of losing the licence, traffic commissioners have to conclude what is proportionate. Revocation is not disproportionate where, in the absence of any objective justification and excuse, there have been long term, sustained, repetitive deficiencies<sup>26</sup>.

- 37.** *If there has been no balancing exercise, or if the challenged decision lacks either intelligible or adequate reasoning, or those elements that are regarded as the essential ingredients of a written decision are missing, or if there is an apparent and material error in the commissioner's understanding of the law or the key facts, then an appellate tribunal will be bound to consider whether it should intervene on the ground that the commissioner's decision is plainly wrong. But an assertion that a decision is "disproportionate" is often little more than an assertion that the appellant disagrees with the commissioner's findings of fact, or thinks that the action taken was too severe. This does not, however, mean that an error of law has occurred, or that reason and the law require the tribunal to take a different view<sup>27</sup>.*
- 38.** There may be occasions where there is a need to make an example of the operator so as to send a warning to the industry as a whole<sup>28</sup>. In cases of deception traffic commissioners are entitled to ask: would other operators who have heard of this ruse consider the perpetrator to be of good repute?<sup>29</sup>
- 39.** A statutory undertaking requires that the operator should set up adequate systems and not allow them to run themselves: what is required is constant supervision and monitoring so as to ensure that the systems work<sup>30</sup>. The Transport Tribunal expressly dissented from the proposition that a traffic commissioner must invariably set out all the criteria that they have considered, as each case turns on its own facts. Factors such as the wish to protect employees and the setting of priorities might be relevant. However the undertakings given in order to enjoy the benefits of a licence are explicit (e.g. in relation to drivers' hours and tachographs<sup>31</sup>). The applicable requirements are often intended to protect other road users. The operator should take reasonable steps to prevent contraventions. Whilst it would be an overstatement to describe an undertaking as imposing absolute liability<sup>32</sup> it is part of the operator's duty to see that he or she is informed of the relevant facts. Tachograph offences must always be viewed seriously but also in perspective<sup>33</sup> to the particular case. In cases of persistent breaches it will be difficult for an operator to contend that he has complied with his undertaking. An undertaking requires a rigorous regime of checks<sup>34</sup>. Where there are repeated infringements there is likely to be some degree of recklessness on the part of an operator and

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<sup>26</sup> 2009/410 Warstone Motors t/a The Green Bus Service

<sup>27</sup> 2011/046 Eurofast (Europe) Ltd, 2011/360 Professional Transport Ltd

<sup>28</sup> 2007/459 KDL European Ltd & Kevin Lumsden, 2010/035 S & A Curtis Transport

<sup>29</sup> 1996/H46 Mark Anthony Browne t/a Brownes Transport Appeal, as approved in 2002/009 George Gollop & Direct Movement Services Ltd

<sup>30</sup> 1999/L56 Alison Jones t/a Jones Motors as approved 2000/45 Martin Jolly Transport Ltd, 2005/236 Neil Alldritt t/a Maple Motors

<sup>31</sup> Vehicle Inspectorate v Nuttall (1999) RTR 264 HL

<sup>32</sup> 2008/413 Al-Le Logistics Ltd

<sup>33</sup> 2008/780 South Lincs Plant Hire

<sup>34</sup> 2001/007 Alcaline UK

it may be difficult for an operator to contend that its systems are either appropriate or reasonable<sup>35</sup>.

40. Where there have been serious failures in maintenance and/or repeated failures to ensure the roadworthiness of vehicles and/or trailers a traffic commissioner is not required to give an operator more time to put systems in place which should have been effective from the outset of operation. An operator is expected to react to indications of shortcomings, such as repeated test failures or prohibitions, and to address weaknesses in the management of the transport operation<sup>36</sup>.
41. In certain cases it may be appropriate to separately consider the position of a company holding a licence from that of its director(s) and/or officers. The correct approach in those circumstances may be to give the operator an opportunity, for instance, to nominate an alternative transport manager or allow the resignation of a particular director or to take alternative action so as to avoid revocation thereby allowing the operator to retain its good repute<sup>37</sup>.

#### *Procedure*

42. If a traffic commissioner intends to take action it is desirable to give a warning or at least indicate the likely options to enable the operator to make representations about the possible effect on the business<sup>38</sup>. There will be cases where the process of making representations will be assisted by a provisional indication of what the traffic commissioner has in mind. In this situation the traffic commissioner should use a form of words which clearly demonstrates that he or she retains an open mind. The traffic commissioner can then proceed to conduct a balancing exercise following the receipt of representations<sup>39</sup>. Traffic commissioners should consider the weight to be attached to the operator's explanations for any shortcomings and give credit for steps taken to improve systems. These matters are particularly important when considering the balancing exercise to be undertaken before making a direction under section 26 of the Act. Traffic commissioners are reminded that more weight may be given to cogent evidence provided by the licence holder intended to show the likely effect of an order that the traffic commissioner is considering and that less weight may be given to mere assertions on the part of the licence holder.
43. For standard licences where a traffic commissioner reaches a negative decision, including final rejection of an application, the suspension or revocation of an existing licence and a finding against the repute or competency of a transport manager, full reasons must be given<sup>40</sup>. Traffic commissioners should where necessary explain why a particular direction is more appropriate than another and/or the length of time of that direction. A specified period might assist an operator to focus his or her mind and allow the operator to take further steps to improve the systems in question<sup>41</sup>. It might be self evident that financial consequences will follow from a direction. Good practice indicates that evidence

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<sup>35</sup> 2001/049 Norbert Dentressangle

<sup>36</sup> 2003/194 Smith's Distribution

<sup>37</sup> 2003/107 R A Meredith & Son (Nurseries) Ltd and Article 13 Regulation (EC) 1071/2009

<sup>38</sup> 1997/J37 Galloway Refrigerated Transport Ltd as approved in 2002/167 A Cooper

<sup>39</sup> 2002/197 Mason Haulage

<sup>40</sup> See Article 15 Regulation (EC) 1071/2009

<sup>41</sup> 2004/036 G Jenkins



and submissions on consequences should be invited before an order is made<sup>42</sup>. An attempt to ascertain the likely consequences of action will not give rise to a legitimate expectation as to the outcome as until all evidence and submissions have been considered and there has been time for reflection a traffic commissioner will have an open mind<sup>43</sup>. The question of the likely effect upon the operator should be properly examined and advocates are expected to assist in this exercise. The traffic commissioner might also take a view on when a particular direction might be implemented<sup>44</sup>. A decision not to disqualify (see below) might also be used to indicate credit for any positive features identified<sup>45</sup>.

44. On findings that an operator has failed to meet the standards required it is proportionate for a traffic commissioner to refuse a variation application until such time as the traffic commissioner can be satisfied that everything is functioning properly and to request further checks on any assurances given at public inquiry<sup>46</sup>.

#### *Rehabilitation and Disqualification*

45. The above case law must be interpreted so as to give effect to Article 14 of Regulation (EC) 1071/2009. There was previously no power to disqualify a transport manager for any period<sup>47</sup> but that has now changed. Article 14 provides that where a traffic commissioner finds that a transport manager has lost his or her repute the traffic commissioner is obliged to declare that transport manager unfit to manage the transport activities of any transport operation. That transport manager's certificate of professional competence (CPC) will no longer be valid until a specified rehabilitation measure has been completed. As indicated above paragraph 17 of Schedule 3 of the Goods Vehicles (Licensing of Operators) Act 1995 and Section 7C of the Public Passenger Vehicles Act 1981 allow the traffic commissioner to cancel or (with the consent of the disqualified person) to vary the order and to specify measures with which the disqualified person must comply before the order can be cancelled or varied. There is no case law relating to rehabilitation beyond the general guidance which might be drawn on those cases relating to disqualification.
46. An order for disqualification can only be against the operator or a director/equivalent of the corporate body (but not for instance a company secretary<sup>48</sup>) or a transport manager (under different legislation). Disqualification cannot be imposed without an order for revocation<sup>49</sup> but an order for disqualification should not necessarily follow revocation. Disqualification is a potentially significant infringement of rights<sup>50</sup> and the Upper Tribunal has indicated that whilst there is no 'additional feature' required to order disqualification it is not a direction which should be routinely ordered<sup>51</sup>. There may be cases in which the seriousness of the operator's conduct is such that a traffic commissioner may properly consider that both revocation and

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<sup>42</sup> 2002/167 A Cooper

<sup>43</sup> Professional Transport Ltd (see above), 1997/J37 Galloway Refrigerated Transport Ltd

<sup>44</sup> 2003/287 Malco Freight

<sup>45</sup> 2010/073 Paul Anthony Faulkner

<sup>46</sup> Malco Freight (as above)

<sup>47</sup> 2008/315 LC Mistry

<sup>48</sup> 2002/094 BKG Transport

<sup>49</sup> 2009/498 G Sunderland & J Warburton

<sup>50</sup> 2000/006 K Jaggard

<sup>51</sup> 2002/030 Steven Lloyd t/a London Skips



disqualification are necessary for the purposes of enforcing the legislation<sup>52</sup>. The provisions are in general terms, consistent with the concept of deterrence, but assessment of culpability and use of words such as penalty should be avoided. The case law indicates a general principle that at the time the disqualification order is made that the operator cannot be trusted to comply with the regulatory regime and that the objectives of the system, the protection of the public and fairness to other operators, requires that the operator be disqualified<sup>53</sup>.

- 47.** Section 28(1) of the Goods Vehicles (Licensing of Operators) Act 1995 permits disqualification to be ordered either indefinitely or for such period as the traffic commissioner thinks fit. The periods are expressed to be in the alternative, with there being no power to impose a minimum period as section 28(6) expressly empowers traffic commissioners to cancel an order for disqualification at any time<sup>54</sup>.

Traffic commissioners are reminded that consideration of the period of any order for disqualification will always turn upon the facts of the individual case. The guidance from the Upper Tribunal reflects this. In one case the Upper Tribunal has described a three-year disqualification as “the top end of fixed term disqualifications” following a first public inquiry as it allows limited light at the end of the tunnel and may prevent an operator from hanging onto many aspects of the operation. Conversely a one year disqualification where the essential element of trust was found to be missing has been described as “not long”<sup>55</sup>. The Upper Tribunal described a three year disqualification following multiple failures as “out of step with the approach generally taken by other traffic commissioners”<sup>56</sup> whilst in another case the Upper Tribunal gave guidance in which disqualification of 3 years and 6 months was upheld on findings of persistent use of an unauthorised operating centre and of persistent operation without a transport manager<sup>57</sup>. A period of 7 years disqualification has been upheld following a fatal incident and where the operator had been to two public inquiries previously<sup>58</sup> and so has a disqualification of 5 years following a first public inquiry following a “very bad case” of drivers’ hours and tachograph compliance<sup>59</sup>. As stated above it is clear that each case must be considered on its own merits<sup>60</sup> and relies on the traffic commissioner to assess what is necessary to balance the objectives of the legislation including the protection of the public and ensuring fairness to the legitimate licensed transport industry against the potentially significant infringement of the licence holder’s or individual’s rights.

- 48.** In imposing a disqualification there should be an assessment of the evidence in setting the appropriate length of the order<sup>61</sup>. Once the period of time is determined traffic commissioners are reminded of the need to set out the relevant findings of fact, the analysis of the relevant actions of those concerned and to conduct the appropriate balancing exercise, so that the licence holder is

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<sup>52</sup> 2001/074 Brian Edward Clark applying 2000/005 Marilyn Williams and 2000/018 Euroline Transport Ltd

<sup>53</sup> 2009/011 Katherine Oliver and J W Swan & Partners

<sup>54</sup> 2001/006 M-Line

<sup>55</sup> 2010/059 George William Garmston t/a George Garmston Light Haulage

<sup>56</sup> 2010/029 David Finch & again in 2011/033 Paul Coleman t/a Coach UK Travel

<sup>57</sup> Katherine Oliver (as above)

<sup>58</sup> 2009/369 Munro & Sons (Highland) Ltd

<sup>59</sup> 2009/240 A M Kydd t/a Sandy Kydd Road Transport

<sup>60</sup> Katherine Oliver (as above) - see paragraph 12

<sup>61</sup> 2005/426 K S Oakhal

aware of the material used to justify disqualification<sup>62</sup>. Good practice dictates that if the decision is issued orally that written confirmation of the oral decision is sent to those the subject of the disqualification but it is likely that the majority of orders for disqualification will be encompassed in traffic commissioners' full written reasons accompanying the order for revocation. In some cases it may be appropriate, having indicated a view on the evidence, to seek written representations at the end of a hearing before deciding on whether disqualification is appropriate<sup>63</sup>.

49. Where a former licence holder or individual applies to cancel an order for disqualification the burden lies with the applicant and the test is what is appropriate in the public interest, and the traffic commissioner will need to consider all relevant aspects. Each case turns on its own facts. Protection of the public<sup>64</sup> is just one of several factors to be taken into account when deciding what is necessary<sup>65</sup>.

#### *Active Case Management*

50. The Senior Traffic Commissioner considers that by following these principles in hearings traffic commissioners will be able to actively manage the case whilst ensuring that cases are dealt with justly, so far as is practicable by –
- (a) ensuring that all evidence is served by the Office of the Traffic Commissioner in a timely manner;
  - (b) ensuring that any written evidence and representations from the operator and/or its representative is provided to the presiding traffic commissioner sufficiently in advance of the hearing so that it can be read and considered by the commissioner in advance
  - (c) ensuring that operators provide the documents requested by the Office of the Traffic Commissioner in advance of the public inquiry where requested to do so;
  - (d) identifying the issues for determination by the traffic commissioner at an early stage
  - (e) ensuring value for money in the use of time and resources (including considering the need to call witnesses whose evidence may be agreed)
  - (f) dealing with the case in ways which are proportionate to –
    - (i) the size and type of licence/s involved
    - (ii) the nature and scale of the breaches
    - (iii) the complexity of the issues
    - (iv) the likely orders and directions to be made
    - (v) the likely effect upon the operator of the proposed orders and directions; and
  - (g) ensuring that the public inquiry is listed expeditiously and that an appropriate time estimate is allocated<sup>66</sup>

#### *Communicating the decision*

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<sup>62</sup> 2004/373 Rai Transport (Midlands) Ltd

<sup>63</sup> 2005/367 K Jaggard

<sup>64</sup> 2007/61 RD Land

<sup>65</sup> 2008/593 Martin John Graves

<sup>66</sup> see Statutory Guidance and Statutory Directions on Case Management

51. The letter communicating the traffic commissioner's decision to revoke should, as a matter of natural justice, include reasons for the decision or refer to a document containing the written reasons or a written decision<sup>67</sup>.

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<sup>67</sup> 2009/204 Verrechia, see Statutory Guidance on Written Reasons, Decisions and Publication and Article 15 of Regulation (EC) 1071/2009 regarding standard licences

## **DIRECTIONS**

### **Basis of Directions**

- 52.** These directions are issued under section 4C(1)(b) of the 1981 Act to provide practical advice on the administrative arrangements to those who support the traffic commissioners in fulfilling their statutory functions and the procedure to be adopted by traffic commissioners in conducting hearings under the legislation set out in the attached Statutory Guidance.
- 53.** The criminal courts are concerned with punishing those who have committed criminal offences, whereas traffic commissioners are concerned with promoting the objectives of the relevant legislation in seeking to ensure that operators who can and will comply retain their licences whilst ensuring that operators who cannot or will not comply do not retain their licences. Consequently questions of what action is proportionate will vary in each individual case.

### **The public inquiry**

- 54.** The value of hearing all of the relevant evidence and submissions at public inquiry is long established and traffic commissioners will be careful to ensure that each case is dealt with on its own facts. Traffic commissioners will note that a case that may appear to be very serious from an initial reading of the brief can in fact turn out not to require severe regulatory action once all the evidence and submissions has been heard and conversely that a case that initially appears not to be serious can then in fact require severe regulatory action.
- 55.** To ensure a consistency of approach at the hearing of the public inquiry itself Annex 3 sets out some suggested starting points. (It does not deal with when a matter might be called to a hearing.) However the presiding traffic commissioner retains absolute discretion to move up or down from the suggested starting points as and when the particular facts and circumstances of a case justify it. There are many variables in the types of case before a traffic commissioner. Annex 3 refers to the most common occurring concerns. Traffic commissioners will take into account any other concerns that are raised and take whatever action appears to be appropriate in the individual circumstances.
- 56.** Annex 3 considers common areas of negative conduct experienced and the balancing factors relevant when considering the conduct of operators. The tables contain lists which are neither exhaustive nor prescriptive. Each case must turn on its facts.
- 57.** The term “infringement” has been deliberately adopted although this is not a punitive exercise. Any breach of relevant rules, regulations or legislation that is admitted, or determined on the balance of probabilities, is regarded as an infringement regardless of whether or not the subject matter in question has been prosecuted and/or a penalty imposed.
- 58.** The type of regulatory action that an operator might receive has been categorised under four broad headings to encapsulate the most serious types of regulatory action down to the least serious, with a degree of overlap between each category. Each category details the various types of regulatory action that might be considered as proportionate and appropriate to a particular case.

Having balanced the evidence heard at a public inquiry, and the negative and positive features that are present, a traffic commissioner should be able to arrive at a starting point within one of the four broad categories of regulatory action.

## **The Role of the Public Inquiry Clerk**

- 59.** The role of a public inquiry clerk (caseworker) is to provide administrative support to the traffic commissioner to allow him/her to carry out their statutory duties in relation to public inquiries and/or driver conduct hearings. They are not responsible for identifying which operators/applicants should be called to public inquiries nor are they responsible for the decisions taken at public inquiries but will assist the traffic commissioner with general enquiries. If a caseworker is in any doubt as to the traffic commissioner's intentions they should make the appropriate enquiries of the traffic commissioner.

## **Mandatory requirements**

- 60.** Operators who are called to public inquiry will be required to demonstrate that they continue to meet the requirement to be of appropriate financial standing or, in the case of restricted goods licenses to have sufficient financial resources. This is because it has frequently been found that other shortcomings are caused by lack of adequate finance. The evidential basis for this request should always be stated in the letter calling an operator to a public inquiry<sup>68</sup>.
- 61.** Holders of standard goods and PSV licences and transport managers are required to be of good repute. Holders of all standard licences are required to be professionally competent and this may be the licence holder or the licence holder may employ a transport manager who can demonstrate that he or she meets the professional competence requirement<sup>69</sup>.
- 62.** When considering whether the mandatory requirements are met the traffic commissioner may only make an adverse finding if there is sufficient evidence to satisfy him or her on the balance of probabilities, i.e. a fact is more likely than not. For instance evidence might suggest that the nominated transport manager has not been exercising continuous and effective responsibility or there is information to suggest that the transport manager may not be capable of exercising this level of control. In those circumstances the traffic commissioner may need to consider whether the relevant acts or omissions call in to question the repute of the transport manager<sup>70</sup>.
- 63.** For standard licences Regulation (EC) 1071/2009 at (Annex 1) allows but does not require the traffic commissioner to provide a period to rectify the situation. The operator must be notified and should be given a limited time (because of the implications for fair competition), for instance 14 days, to make written representations before the traffic commissioner decides whether to allow time for rectification and for what period. The maximum periods allowed under the legislation are as follows:

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<sup>68</sup> See Statutory Guidance and Statutory Directions on Finance

<sup>69</sup> See Statutory Guidance and Statutory Directions on Transport Managers

<sup>70</sup> See Statutory Guidance and Statutory Directions on Good Repute and Fitness



Shortcoming		Maximum Period of Grace
Transport Manager	Departure	6 months
	Death or physical incapacity	6 + 3 months
Effective & Stable Establishment		6 months
Financial Standing		6 months to demonstrate that the requirement will be met <i>on a permanent basis</i>

### Action to be considered at public inquiries

64. In deciding what action is proportionate traffic commissioners will wish to carry out a balancing exercise. Invariably this involves consideration of the seriousness of any breaches which the traffic commissioner has found to have occurred, and what has been done to remedy those transgressions (and when such action was taken), with reference being made to the size of the fleet and its history. As the operator was trusted to ensure compliance from the date of grant promises of future action will carry less weight. It is neither practical nor desirable to lay down fixed criteria because every case will be different, but the following paragraphs represent a guideline. The revocation of standard operator licences is mandatory if the holder is found to be no longer of good repute, of appropriate financial standing or professionally competent, subject to a period of grace which might apply in respect of financial standing or professional competence. Failures to meet the requirements of the operator's licence may place the repute of the operator and/or the transport manager at issue. The principles set out in the attached Statutory Guidance will then apply.

### New operators

65. Notwithstanding the above new operators are more likely to be called to a public inquiry if, during their first year, there are grounds to suggest (possibly from a VOSA new operator check) that the systems required and the operator has recently undertaken to implement, are not functioning as required by the licence or the operator is not committed to ensuring compliance. In these cases, particularly for restricted licence holders, who are not required to employ anyone of professional competence, a public inquiry may be an important educational and regulatory opportunity, in line with the principles outlined in the Compliance Code for Regulators<sup>71</sup>. Where allegations, however, of non-compliance appear to have impacted on road safety such as the issue of an immediate 'S' endorsed prohibition of a vehicle or tachograph records have not been produced, it is more likely that the traffic commissioner will wish to consider taking action against that licence.

<sup>71</sup> See in particular paragraphs 5.2 and 5.4 (<http://www.bis.gov.uk/policies/better-regulation/improving-regulatory-delivery/implementing-principles-of-better-regulation/the-regulators-compliance-code>)

## Multiple licence holders and the lead traffic commissioner

66. The legislation enables an operator's licence to be subject to revocation, suspension or curtailment (or in the case of public service vehicle (PSV) operators, a reduction in the number of authorised vehicles). It is for the traffic commissioner who hears the case to decide, with regard to the nature and circumstances of each case, what action is appropriate. A multiple licence holder (MLH) may face regulatory action against one or more of its operator licences, and any determination which is made may only relate to those operators' licences which fall to be considered by the traffic commissioner<sup>72</sup>.

### Disqualification

67. Section 28 of the Transport Act 1985 and section 28 of the Goods Vehicles (Licensing of Operators) Act 1995 enables the disqualification of a person from holding an operator's licence and for that order to be varied or cancelled. In the event of the revocation of an operator's licence a commissioner will wish to consider disqualification of the licence holder and any director of a company or partner (as appropriate). Careful consideration of disqualification and of its effects upon the licence holder and any linked licence holders is required and Section 28 of the Goods Vehicles (Licensing of Operators) Act 1995 and section 28 of the Transport Act 1985 are set out at Annex 4.
68. Taking account of the guidance from the Upper Tribunal that each case must be looked at on its merits traffic commissioners may wish to use as a starting point for a first public inquiry consideration of a disqualification period of between 1 and 3 years but serious cases, where, for example, the operator deliberately puts life at risk and/or knowingly operates unsafe vehicles or allows drivers to falsify records, may merit disqualification of between 5 to 10 years or in certain cases for an indefinite period. It is always open to a disqualified person to make application for removal or reduction of the order. Unless there are exceptional circumstances, a disqualification of less than two years will not normally be reduced, and disqualification for longer or indefinite periods will not normally be reviewed until half the period or 5 years of the disqualification have elapsed as applies.
69. There are different provisions relating to the disqualification of a transport manager. Where a transport manager has been disqualified it will be necessary to notify all operators who rely on that transport manager to meet the requirement for professional competence in order to allow that operator to nominate a new CPC holder and/or to request a period of grace in order to obtain a replacement transport manager. It is good practice to notify the related operator of the reasons for the traffic commissioner's decision.

### Rehabilitation

70. Great Britain has not enacted the provisions of Article 6.3 of Regulation (EC) 1071/2009 into national law and there is therefore no power for traffic commissioners to order an operator to undertake rehabilitation measures in order to regain their good repute. They can, as indicated above, order measures to be taken by a disqualified transport manager, for instance re-taking and passing the examinations to obtain a Certificate of Professional

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<sup>72</sup> See Statutory Guidance on Delegations and Multiple Licence Holders

Competence. However there is nothing to prevent the presiding traffic commissioner from giving an indication to an operator who has lost its repute of the steps that may be taken in the future to regain that repute.

## **Decisions**

- 71.** After giving due consideration to the evidence and any submissions, the decision of a traffic commissioner may either be communicated to the operator/applicant orally at the end of the inquiry or be reserved, with the decision being notified in writing at a later date<sup>73</sup>.
- 72.** All letters notifying operators/applicants of decisions should provide details of the decision or refer to an attached document and advice on actions to be taken by an operator / applicant and contain information about rights of appeal. Other relevant parties at the inquiry should receive notification of the decision. The decision will also be published in the Notices and Proceedings or Applications and Decisions in accordance with legislative requirements.

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<sup>73</sup> See Statutory Guidance and Statutory Directions on Written Reasons, Decisions and Publication

## ANNEX 1: 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 3 - Requirements for engagement in the occupation of road transport operator**

1. Undertakings engaged in the occupation of road transport operator shall:

- (a) have an effective and stable establishment in a Member State;
- (b) be of good repute;
- (c) have appropriate financial standing; and
- ((d) have the requisite professional competence.

2. Member States may decide to impose additional requirements, which shall be proportionate and non-discriminatory, to be satisfied by undertakings in order to engage in the occupation of road transport operator.

### **Article 6 - Conditions relating to the requirement of good repute**

1. Subject to paragraph 2 of this Article, Member States shall determine the conditions to be met by undertakings and transport managers in order to satisfy the requirement of good repute laid down in Article 3(1)(b).

In determining whether an undertaking has satisfied that requirement, Member States shall consider the conduct of the undertaking, its transport managers and any other relevant person as maybe determined by the Member State. Any reference in this Article to convictions, penalties or infringements shall include convictions, penalties or infringements of the undertaking itself, its transport managers and any other relevant person as may be determined by the Member State.

The conditions referred to in the first subparagraph shall include at least the following:

(a) that there be no compelling grounds for doubting the good repute of the transport manager or the transport undertaking, such as convictions or penalties for any serious infringement of national rules in force in the fields of:

- (i) commercial law;
- (ii) insolvency law;
- (iii) pay and employment conditions in the profession;
- (iv) road traffic;
- (v) professional liability;
- (vi) trafficking in human beings or drugs; and

(b) that the transport manager or the transport undertaking have not in one or more Member States been convicted of a serious criminal offence or incurred a penalty for a serious infringement of Community rules relating in particular to:

- (i) the driving time and rest periods of drivers, working time and the installation and use of recording equipment;
- (ii) the maximum weights and dimensions of commercial vehicles used in international traffic;
- (iii) the initial qualification and continuous training of drivers;
- (iv) the roadworthiness of commercial vehicles, including the compulsory technical inspection of motor vehicles;
- (v) access to the market in international road haulage or, as appropriate, access to the market in road passenger transport;
- (vi) safety in the carriage of dangerous goods by road;
- (vii) the installation and use of speed-limiting devices in certain categories of vehicle;
- (viii) driving licences;
- (ix) admission to the occupation;
- (x) animal transport.

2. For the purposes of point (b) of the third subparagraph of paragraph 1:

(a) where the transport manager or the transport undertaking has in one or more Member States been convicted of a serious criminal offence or incurred a penalty for one of the most serious infringements of Community rules as set out in Annex IV, the competent authority of the Member State of establishment shall carry out in an appropriate and timely manner a duly completed administrative procedure, which shall include, if appropriate, a check at the premises of the undertaking concerned.

The procedure shall determine whether, due to specific circumstances, the loss of good repute would constitute a disproportionate response in the individual case. Any such finding shall be duly reasoned and justified.

If the competent authority finds that the loss of good repute would constitute a disproportionate response, it may decide that good repute is unaffected. In such case, the reasons shall be recorded in the national register. The number of such decisions shall be indicated in the report referred to in Article 26(1).

If the competent authority does not find that the loss of good repute would constitute a disproportionate response, the conviction or penalty shall lead to the loss of good repute;

(b) the Commission shall draw up a list of categories, types and degrees of seriousness of serious infringements of Community rules which, in addition to those set out in Annex IV, may lead to the loss of good repute. Member States shall take into account information on those infringements, including information received from other Member States, when setting the priorities for checks pursuant to Article 12(1).

Those measures, designed to amend non-essential elements of this Regulation by supplementing it and which relate to this list, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 25(3).



To this end, the Commission shall:

(i) lay down the categories and types of infringement which are most frequently encountered;

(ii) define the degree of seriousness of infringements according to their potential to create a risk of fatalities or serious injuries; and

(iii) provide the frequency of occurrence beyond which repeated infringements shall be regarded as more serious, by taking into account the number of drivers used for the transport activities managed by the transport manager.

3. The requirement laid down in Article 3(1)(b) shall not be satisfied until a rehabilitation measure or any other measure having an equivalent effect has been taken pursuant to the relevant provisions of national law.

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## **ANNEX 2 – INFRINGEMENTS**

### **Regulation (EC) 1071/2009 - ANNEX IV**

#### **Most serious infringements for the purposes of Article 6(2)(a)**

1. (a) Exceeding the maximum 6-day or fortnightly driving time limits by margins of 25% or more.  
  
(b) Exceeding, during a daily working period, the maximum daily driving time limit by a margin of 50% or more without taking a break or without an uninterrupted rest period of at least 4,5 hours.
2. Not having a tachograph and/or speed limiter, or using a fraudulent device able to modify the records of the recording equipment and/or the speed limiter or falsifying record sheets or data downloaded from the tachograph and/or the driver card.
3. Driving without a valid roadworthiness certificate if such a document is required under Community law and/or driving with a very serious deficiency of, inter alia, the braking system, the steering linkages, the wheels/tyres, the suspension or chassis that would create such an immediate risk to road safety that it leads to a decision to immobilise the vehicle.
4. Transporting dangerous goods that are prohibited for transport or transporting such goods in a prohibited or non-approved means of containment or without identifying them on the vehicle as dangerous goods, thus endangering lives or the environment to such extent that it leads to a decision to immobilise the vehicle.
5. Carrying passengers or goods without holding a valid driving licence or carrying by an undertaking not holding a valid Community licence.
6. Driving with a driver card that has been falsified, or with a card of which the driver is not the holder, or which has been obtained on the basis of false declarations and/or forged documents.
7. Carrying goods exceeding the maximum permissible laden mass by 20% or more for vehicles the permissible laden weight of which exceeds 12 tonnes, and by 25% or more for vehicles the permissible laden weight of which does not exceed 12 tonnes.

## ANNEX 3 – SUGGESTED STARTING POINTS FOR CONSIDERATION OF REGULATORY ACTION

The following derives from the Senior Traffic Commissioner’s analysis of the available Upper Tribunal case law but please also note Annex 2 above.

Each case must be dealt with on its own facts. In determining how to dispose of most cases the traffic commissioners will not only consider the alleged infringements but also the potential impact on the operator. A case may involve many variables including different variations of alleged breaches, negative and balancing features. What appears on the face of the papers to be very serious may not in fact warrant severe regulatory action. As a result, whilst the following guidance can provide for consistency in approach by suggesting starting points for regulatory action this Annex cannot be used to predict the outcome of a public inquiry or give rise to a legitimate expectation. The presiding traffic commissioner retains absolute discretion to move up or down from the suggested starting points.

<b>SEVERE</b>	<ul style="list-style-type: none"> <li>●Revocation with detailed consideration of disqualification</li> <li>●Revocation</li> <li>●Suspension that materially affects the transport operation</li> <li>●Significant indefinite curtailment that materially affects the transport operation</li> </ul>
<b>SERIOUS</b>	<ul style="list-style-type: none"> <li>●Revocation with consideration of disqualification</li> <li>●Suspension for up to 28 days</li> <li>●Significant time limited curtailment that may materially affect the transport operation</li> </ul>
<b>MODERATE</b>	<ul style="list-style-type: none"> <li>●Suspension for up to 14 days</li> <li>●Indefinite or time limited curtailment that does not materially affect the transport operation e.g. removal of the margin</li> </ul>
<b>LOW</b>	<ul style="list-style-type: none"> <li>●Formal warning that attendance at a further public inquiry will be likely to lead to regulatory action being taken against the licence</li> </ul>

Note – (a) curtailment includes attachment of a condition limiting the number of PSVs on the licence

(b) nothing in the above precludes the traffic commissioner from recording further undertakings and/or statements of intent from the operator

(c) none of the lists in this Annex below are intended to be exhaustive.

## VEHICLE OVERLOADING

BALANCING FEATURES	NEGATIVE FEATURES
<ul style="list-style-type: none"> <li>● Very slight overload and limited risk to road safety</li> <li>● Technical overload due to a failure to update</li> </ul>	<ul style="list-style-type: none"> <li>● Road safety put at risk</li> </ul>
<ul style="list-style-type: none"> <li>● No commercial gain</li> </ul>	<ul style="list-style-type: none"> <li>● Commercial gain</li> </ul>
<ul style="list-style-type: none"> <li>● No operator/driver fault</li> </ul>	<ul style="list-style-type: none"> <li>● Deliberate/reckless act</li> </ul>
<ul style="list-style-type: none"> <li>● Proper systems and procedures in place to prevent overloading</li> </ul>	<ul style="list-style-type: none"> <li>● Drivers encouraged/pressured to overload vehicles/trailers*</li> </ul>
<ul style="list-style-type: none"> <li>● Effective management control</li> </ul>	<ul style="list-style-type: none"> <li>● Limited or no management control</li> </ul>
<ul style="list-style-type: none"> <li>● Proper and effective driver training</li> </ul>	<ul style="list-style-type: none"> <li>● Ineffective systems and procedures to prevent overloading</li> </ul>
<ul style="list-style-type: none"> <li>● "One off" incident after a long and un-blemished operating history</li> </ul>	<ul style="list-style-type: none"> <li>● Insufficient or ineffective driver training</li> </ul>
<ul style="list-style-type: none"> <li>● Robust training and disciplinary procedures in place</li> </ul>	<ul style="list-style-type: none"> <li>● Persistent overloading</li> </ul>
<ul style="list-style-type: none"> <li>● Evidence of appropriate disciplinary action being taken against offending driver(s)</li> </ul>	<ul style="list-style-type: none"> <li>● Overloading after a previous PG9/Fixed Penalty Notice/Conviction or warning from a traffic commissioner</li> </ul>
<ul style="list-style-type: none"> <li>● Driver deliberately disregarding appropriate instruction and/or legislation</li> </ul>	<ul style="list-style-type: none"> <li>● Insufficient or ineffective disciplinary procedures</li> </ul>
<ul style="list-style-type: none"> <li>● Sufficient and effective changes made, with tangible evidence in support, to ensure compliance</li> </ul>	<ul style="list-style-type: none"> <li>● Failure to report Fixed Penalty Notice(s)/conviction(s) to the traffic commissioner within 28 days</li> </ul>

**VEHICLE OVERLOADING –  
STARTING POINTS FOR REGULATORY ACTION**

See also Annex 2

<b>CONDUCT</b>	<b>REGULATORY STARTING POINT</b>
Deliberate or reckless act(s) that compromised road safety and/or gave the operator a clear commercial advantage	SEVERE to SERIOUS
Persistent overloading and/or overloading despite previous PG9s/Fixed Penalty Notices/Conviction(s) or warning from a Traffic Commissioner	SERIOUS to MODERATE
Two or more negative features not already detailed under “Conduct” above and some balancing features	SERIOUS to MODERATE
Limited negative feature(s) not already detailed under “Conduct” above and several balancing features	MODERATE TO LOW

This list is not exhaustive.

- See:
1. 1999/L56 Alison Jones t/a Jones Motors
  2. 2001/049 Norbert Dentressangle
  3. 2006/149 A & C Nowell



## TACHOGRAPH FALSIFICATION

BALANCING FEATURES	NEGATIVE FEATURES
<ul style="list-style-type: none"> <li>● Isolated incident and/or driver deliberately disregarding appropriate instruction and/or legislation</li> </ul>	<ul style="list-style-type: none"> <li>● Deliberate act(s) whereby the operator placed road safety (including driver safety) at risk</li> </ul>
<ul style="list-style-type: none"> <li>● Previous unblemished record</li> </ul>	<ul style="list-style-type: none"> <li>● Deliberate act(s) whereby the operator gained or had the potential to gain a commercial advantage</li> </ul>
<ul style="list-style-type: none"> <li>● Proper and effective driver training including regular refresher training</li> </ul>	<ul style="list-style-type: none"> <li>● Attempts or actions designed to conceal offences or deliberately mislead an enforcement authority (including use of devices)</li> </ul>
<ul style="list-style-type: none"> <li>● No attempt by the operator to conceal offences or mislead enforcement authority</li> </ul>	<ul style="list-style-type: none"> <li>● Encouraging drivers to disregard legislation and/or to falsify records</li> </ul>
<ul style="list-style-type: none"> <li>● Proper and effective systems in place to plan, monitor and enforce tachograph and driver's hours compliance.</li> </ul>	<ul style="list-style-type: none"> <li>● Turning a "blind eye" to the risk of offending or to actual offending</li> </ul>
<ul style="list-style-type: none"> <li>● Proper and effective training and disciplinary procedures in place</li> </ul>	<ul style="list-style-type: none"> <li>● Insufficient and /or ineffective systems in place to plan, monitor and enforce tachograph and drivers hours compliance</li> </ul>
<ul style="list-style-type: none"> <li>● Tangible evidence of appropriate training and disciplinary action taken against serious and/or persistent offending</li> </ul>	<ul style="list-style-type: none"> <li>● Deliberate act(s) or omission(s) on the part of the operator to breach the driver's hours rules and regulations</li> </ul>
<ul style="list-style-type: none"> <li>● Proper and effective management control</li> </ul>	<ul style="list-style-type: none"> <li>● Insufficient and/or ineffective management control</li> </ul>
<ul style="list-style-type: none"> <li>● Sufficient and effective changes made, with tangible evidence in support, to ensure compliance</li> </ul>	<ul style="list-style-type: none"> <li>● Insufficient/ineffective training, disciplinary procedures or disciplinary action</li> </ul>
<ul style="list-style-type: none"> <li>● Training/knowledge assessment when driver first employed.</li> </ul>	<ul style="list-style-type: none"> <li>● Failure to report Fixed Penalty Notice(s)/conviction(s) to the traffic commissioner within 28 days</li> </ul>
<ul style="list-style-type: none"> <li>● No deliberate or reckless act by the operator</li> </ul>	<ul style="list-style-type: none"> <li>● Deliberate act(s) or omissions(s) linked with the operation of the tachograph equipment whereby the operator gained or had the potential to gain a commercial advantage</li> </ul>
<ul style="list-style-type: none"> <li>● Minor and isolated driver errors when making manual entries</li> </ul>	<ul style="list-style-type: none"> <li>● Any reckless act or omission that leads to tampering with the tachograph equipment resulting in false information being recorded</li> </ul>
<ul style="list-style-type: none"> <li>● Isolated incidents of minor non-compliance</li> </ul>	<ul style="list-style-type: none"> <li>● The placing of any item or device on or near a tachograph equipment resulting in false information being recorded</li> </ul>

<ul style="list-style-type: none"> <li>• No risk to road safety</li> </ul>	<ul style="list-style-type: none"> <li>• Persistent breaches and/or history of offending</li> </ul>
<ul style="list-style-type: none"> <li>• No commercial gain</li> </ul>	<ul style="list-style-type: none"> <li>• Lack of knowledge/competence by CPC holder and/or operator licence holder of the current drivers' hours rules and regulations</li> </ul>
<ul style="list-style-type: none"> <li>• Work properly planned to ensure compliance</li> </ul>	
<ul style="list-style-type: none"> <li>• Proper and effective tachograph analysis</li> </ul>	
<ul style="list-style-type: none"> <li>• Proper and effective follow up action/further training following detection of breaches of the rules and regulations</li> </ul>	

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**TACHOGRAPH FALSIFICATION  
STARTING POINTS FOR REGULATORY ACTION**

See also Annex 2

<b>CONDUCT</b>	<b>STARTING POINT</b>
Deliberate act(s) committed with the knowledge and/or the encouragement of the operator	SEVERE to SERIOUS
Falsification resulting in risk to road safety and/or the operator gaining a commercial advantage	SEVERE to SERIOUS
Any attempt by the operator to conceal offences or mislead an enforcement authority	SEVERE to SERIOUS
Any negative feature not already detailed under "Conduct" above with some balancing features	SERIOUS to MODERATE
Any negative feature not already detailed under "Conduct" above with several balancing features	MODERATE

- See:
1. 1999/L56 Alison Jones t/a Jones Motors
  2. 2002/167 Hazco Environmental Services
  3. 2001/007 Alcaline UK Limited
  4. 2001/049 Norbert Dentressangle UK Limited
  5. 2001/608 Dukes Transport
  6. 2008/413 Al-Le Logistics Ltd
  7. 2008/342 Alistair James Brown t/a Browns of Edinburgh

## OTHER TACHOGRAPH MATTERS

BALANCING FEATURES	NEGATIVE FEATURES
<ul style="list-style-type: none"> <li>● Defect(s) with tachograph equipment that an operator would not, or could not, reasonably have known about</li> <li>● 2 &amp; 6 year calibrations current on all vehicles specified.</li> </ul>	<ul style="list-style-type: none"> <li>● Deliberate act(s) or omission(s) linked with the operation of the tachograph equipment whereby the operator put road safety (including driver safety) at risk</li> </ul>
<ul style="list-style-type: none"> <li>● No deliberate or reckless act by the operator</li> </ul>	<ul style="list-style-type: none"> <li>● Deliberate act(s) or omission(s) linked with the operation of the tachograph equipment whereby the operator gained or had the potential to gain a commercial advantage</li> </ul>
<ul style="list-style-type: none"> <li>● Proper and effective driver training including regular refresher training</li> </ul>	<ul style="list-style-type: none"> <li>● Encouraging drivers to disregard legislation</li> </ul>
<ul style="list-style-type: none"> <li>● Minor and isolated driver errors when making manual entries</li> </ul>	<ul style="list-style-type: none"> <li>● Any reckless act or omission that leads to tampering with the tachograph equipment resulting in false information being recorded</li> </ul>
<ul style="list-style-type: none"> <li>● Isolated incidents of minor non-compliance</li> </ul>	<ul style="list-style-type: none"> <li>● The placing of any item or device on or near a tachograph equipment resulting in false information being recorded</li> </ul>
<ul style="list-style-type: none"> <li>● No risk to road safety</li> </ul>	<ul style="list-style-type: none"> <li>● Deliberate act(s) whereby the operator placed road safety (including driver safety) at risk</li> </ul>
<ul style="list-style-type: none"> <li>● Proper and effective systems in place to plan, monitor and enforce tachograph and driver's hours compliance.</li> </ul>	<ul style="list-style-type: none"> <li>● Failing to have the tachograph equipment properly calibrated</li> </ul>
<ul style="list-style-type: none"> <li>● Previous unblemished record</li> </ul>	<ul style="list-style-type: none"> <li>● Persistent breaches and/or previous history of offending</li> </ul>
<ul style="list-style-type: none"> <li>● Sufficient and effective changes made, with tangible evidence in support, to ensure compliance</li> </ul>	<ul style="list-style-type: none"> <li>● Insufficient/ineffective training, disciplinary procedures or disciplinary action</li> </ul>
<ul style="list-style-type: none"> <li>● Proper and effective training and disciplinary procedures in place</li> </ul>	<ul style="list-style-type: none"> <li>● Failure to report Fixed Penalty Notice(s)/conviction(s) to the traffic commissioner within 28 days</li> </ul>
<ul style="list-style-type: none"> <li>● Isolated incident and/or driver deliberately disregarding appropriate instruction and/or legislation</li> </ul>	<ul style="list-style-type: none"> <li>● Deliberate act(s) whereby the operator placed road safety (including driver safety) at risk</li> </ul>
<ul style="list-style-type: none"> <li>● No attempt by the operator to conceal offences or mislead enforcement authority</li> </ul>	<ul style="list-style-type: none"> <li>● Encouraging drivers to disregard legislation and/or to falsify records</li> </ul>
<ul style="list-style-type: none"> <li>● Proper and effective management control</li> </ul>	<ul style="list-style-type: none"> <li>● Insufficient and/or ineffective management control</li> </ul>
<ul style="list-style-type: none"> <li>● Training/knowledge assessment when driver first employed</li> </ul>	<ul style="list-style-type: none"> <li>● Turning of a "blind eye" to the risk of offending or to actual offending</li> </ul>

<ul style="list-style-type: none"> <li>• No commercial gain</li> </ul>	<ul style="list-style-type: none"> <li>• Deliberate act(s) whereby the operator gained or had the potential to gain a commercial advantage</li> </ul>
<ul style="list-style-type: none"> <li>• Work properly planned to ensure compliance</li> </ul>	<ul style="list-style-type: none"> <li>• Deliberate act(s) or omission(s) on the part of the operator to breach the driver's hours rules and regulations</li> </ul>
<ul style="list-style-type: none"> <li>• Proper and effective tachograph analysis</li> </ul>	<ul style="list-style-type: none"> <li>• Drivers encouraged or pressured to commit breaches by the operator</li> </ul>
<ul style="list-style-type: none"> <li>• Proper and effective follow up action/further training following detection of breaches of the rules and regulations</li> </ul>	<ul style="list-style-type: none"> <li>• Attempts or actions designed to conceal offences or deliberately mislead an enforcement authority (including use of devices)</li> </ul>
<ul style="list-style-type: none"> <li>• Tangible evidence of appropriate training and disciplinary action taken against serious and/or persistent offending</li> </ul>	<ul style="list-style-type: none"> <li>• Insufficient and/or ineffective systems in place to plan, monitor and enforce tachograph and drivers hours compliance</li> </ul>
<ul style="list-style-type: none"> <li>• Up to date and competent knowledge of the current driver's hours rules and regulations by the CPC and/or operator licence holder</li> </ul>	<ul style="list-style-type: none"> <li>• Lack of knowledge/competence by CPC holder and/or operator licence holder of the current driver's hours rules and regulations</li> </ul>

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**OTHER TACHOGRAPH MATTERS  
STARTING POINTS FOR REGULATORY ACTION**

See also Annex 2

<b>CONDUCT</b>	<b>STARTING POINT</b>
Any deliberate or reckless act by an operator that results in tachograph recording equipment recording false information	SEVERE to SERIOUS
Any deliberate or reckless act by an operator associated with the use of tachograph recording equipment that compromises road safety and/or gives the operator a clear commercial advantage	SEVERE to SERIOUS
All other matters, depending on their gravity, extent and balance between negative and balancing features	SERIOUS to LOW

- See:
1. 2001/007 Alcaline UK
  2. 2001/049 Norbert Dentressangle
  3. 2001/068 Dukes Transport

**BREACHES OF THE TACHOGRAPH REGULATIONS AND DRIVERS HOURS OFFENCES**

<b>BALANCING FEATURES</b>	<b>NEGATIVE FEATURES</b>
<ul style="list-style-type: none"> <li>• No risk to road safety</li> </ul>	<ul style="list-style-type: none"> <li>• Deliberate act(s) whereby the operator placed road safety (including driver safety) at risk</li> </ul>
<ul style="list-style-type: none"> <li>• No commercial gain</li> </ul>	<ul style="list-style-type: none"> <li>• Deliberate act(s) whereby the operator gained or had the potential to gain a commercial advantage</li> </ul>
<ul style="list-style-type: none"> <li>• Training/knowledge assessment when driver first employed.</li> </ul>	<ul style="list-style-type: none"> <li>• Deliberate act(s) or omission(s) on the part of the operator to breach the driver's hours rules and regulations</li> </ul>
<ul style="list-style-type: none"> <li>• Work properly planned to ensure compliance</li> </ul>	<ul style="list-style-type: none"> <li>• Attempts or actions designed to conceal offences or deliberately mislead an enforcement authority (including use of devices)</li> </ul>
<ul style="list-style-type: none"> <li>• Proper and effective tachograph analysis</li> </ul>	<ul style="list-style-type: none"> <li>• Insufficient and/or ineffective systems in place to plan, monitor and enforce tachograph and drivers hours compliance</li> </ul>
<ul style="list-style-type: none"> <li>• Proper and effective follow up action/further training following detection of breaches of the rules and regulations</li> </ul>	<ul style="list-style-type: none"> <li>• Insufficient and/or ineffective management control</li> </ul>
<ul style="list-style-type: none"> <li>• Tangible evidence of appropriate training and disciplinary action taken against serious and/or persistent offending</li> </ul>	<ul style="list-style-type: none"> <li>• The placing of any item or device on or near a tachograph equipment resulting in false information being recorded</li> </ul>
<ul style="list-style-type: none"> <li>• Proper and effective management control</li> </ul>	<ul style="list-style-type: none"> <li>• Persistent breaches and/or history of offending long standing offences</li> </ul>
<ul style="list-style-type: none"> <li>• Isolated incidents of minor non-compliance</li> </ul>	<ul style="list-style-type: none"> <li>• Lack of knowledge/competence by CPC holder and/or operator licence holder of the current driver's hours rules and regulations</li> </ul>
<ul style="list-style-type: none"> <li>• Previous unblemished record</li> </ul>	<ul style="list-style-type: none"> <li>• Failure to report any Fixed Penalty Notice(s)/conviction(s) to the traffic commissioner within 28 days</li> </ul>
<ul style="list-style-type: none"> <li>• Proper and effective driver training including regular refresher training</li> </ul>	<ul style="list-style-type: none"> <li>• Encouraging drivers to disregard legislation</li> </ul>
<ul style="list-style-type: none"> <li>• Up to date and competent knowledge of the current driver's hours rules and regulations by the CPC holder and/or operator licence holder</li> </ul>	<ul style="list-style-type: none"> <li>• Turning a "blind eye" to the risk of offending or to actual offending</li> </ul>
<ul style="list-style-type: none"> <li>• Sufficient and effective changes made, with tangible evidence in support, to ensure compliance</li> </ul>	<ul style="list-style-type: none"> <li>• Insufficient/ineffective training, disciplinary procedures or disciplinary action</li> </ul>
<ul style="list-style-type: none"> <li>• Isolated incident and/or driver</li> </ul>	<ul style="list-style-type: none"> <li>• Deliberate act(s) or omission(s) linked</li> </ul>

deliberately disregarding appropriate instruction and/or legislation	with the operation of the tachograph equipment whereby the operator gains or has the potential to gain a commercial advantage
<ul style="list-style-type: none"> <li>• No attempt by the operator to conceal offences or mislead enforcement authority</li> </ul>	
<ul style="list-style-type: none"> <li>• Proper and effective systems in place to plan, monitor and enforce tachograph and driver's hours compliance</li> </ul>	
<ul style="list-style-type: none"> <li>• Proper and effective training and disciplinary procedures in place</li> </ul>	
<ul style="list-style-type: none"> <li>• No deliberate or reckless act by the operator</li> </ul>	
<ul style="list-style-type: none"> <li>• Minor and isolated driver errors when making manual entries</li> </ul>	

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**BREACHES OF THE TACHOGRAPH REGULATIONS AND DRIVERS HOURS  
OFFENCES  
STARTING POINTS FOR REGULATORY ACTION**

See also Annex 2

<b>CONDUCT</b>	<b>REGULATORY STARTING POINT</b>
Deliberate actions to breach the rules and regulations resulting in road safety being compromised	SEVERE to SERIOUS
Deliberate actions to breach the rules and regulations resulting in a commercial advantage to the operator	SEVERE to SERIOUS
Drivers encouraged or pressurised to break the rules and regulations	SEVERE to SERIOUS
Long standing/persistent breaches of the rules and regulations	SERIOUS to MODERATE
Any negative feature not already detailed under "Conduct" above with some balancing features	MODERATE
Any negative feature not already detailed under "Conduct" above with several balancing features	MODERATE to LOW

- See:
1. 2001/049 Norbert Dentressangle
  2. 2001/068 Dukes Transport
  3. 2004/313 Yare Haulage Ltd and Peter Pawlett
  4. 2006/161 Kentvale Transport Ltd
  5. 2008/342 Alistair James Brown t/a Browns of Edinburgh

## MISCELLANEOUS OFFENCES AND CONDUCT

BALANCING FEATURES	NEGATIVE FEATURES
<ul style="list-style-type: none"> <li>• No risk to road safety</li> </ul>	<ul style="list-style-type: none"> <li>• Deliberate acts or omissions that compromise road safety and/or give the operator a commercial advantage</li> </ul>
<ul style="list-style-type: none"> <li>• No commercial gain</li> </ul>	<ul style="list-style-type: none"> <li>• Reckless acts or omissions that compromise road safety and/or give the operator a commercial advantage</li> </ul>
<ul style="list-style-type: none"> <li>• Full co-operation with an enforcement authority</li> </ul>	<ul style="list-style-type: none"> <li>• Offending over a protracted time period</li> </ul>
<ul style="list-style-type: none"> <li>• Full and frank admissions to the traffic commissioner</li> </ul>	<ul style="list-style-type: none"> <li>• Acts or omissions that strike at the relationship of trust between the traffic commissioner and the operator</li> </ul>
<ul style="list-style-type: none"> <li>• Timely written notification and accompanying explanation to the traffic commissioner</li> </ul>	<ul style="list-style-type: none"> <li>• Any conduct designed to mislead an enforcement authority</li> </ul>
<ul style="list-style-type: none"> <li>• Tangible evidence that in order to restore full compliance both road safety and fair competition were placed over and above any commercial disadvantage that may result</li> </ul>	<ul style="list-style-type: none"> <li>• Any conduct designed to mislead staff within the Office of the Traffic Commissioner</li> </ul>
<ul style="list-style-type: none"> <li>• A long and previously unblemished operating history</li> </ul>	<ul style="list-style-type: none"> <li>• Encouraging or pressurising employees, servants or agents to facilitate non compliance with the conditions and/or undertakings on the operator's licence</li> </ul>
<ul style="list-style-type: none"> <li>• An isolated/"one off" incident or conduct</li> </ul>	<ul style="list-style-type: none"> <li>• Repeated breaches of environmental conditions</li> </ul>
<ul style="list-style-type: none"> <li>• Proper and effective training systems</li> </ul>	<ul style="list-style-type: none"> <li>• Turning a "blind eye" to non compliance</li> </ul>
<ul style="list-style-type: none"> <li>• Proper and effective systems and procedures to ensure compliance</li> </ul>	<ul style="list-style-type: none"> <li>• Continued offending/conduct after a previous warning from a traffic commissioner</li> </ul>
<ul style="list-style-type: none"> <li>• Proper and effective disciplinary systems</li> </ul>	<ul style="list-style-type: none"> <li>• Failure to report any Fixed Penalty Notice, conviction or material change to the traffic commissioner within 28 days of its occurrence</li> </ul>
<ul style="list-style-type: none"> <li>• Reliance on poor/negligent professional or industry advice</li> </ul>	
<ul style="list-style-type: none"> <li>• Sufficient and effective changes made, with tangible evidence in support, to ensure compliance</li> </ul>	



**MISCELLANEOUS OFFENCES AND CONDUCT  
STARTING POINTS FOR REGULATORY ACTION**

See also Annex 2

<b>CONDUCT</b>	<b>REGULATORY STARTING POINT</b>
Any conduct designed to strike at the relationship of trust between traffic commissioners and operators	SEVERE
Deliberate acts or omissions that compromise road safety and/or result in the operator gaining a commercial advantage	SEVERE to SERIOUS
Any conduct designed to mislead an enforcement agency or the Office of the Traffic Commissioner	SEVERE to SERIOUS
Persistent offending/conduct after previous advice from VOSA or a previous warning(s) from a traffic commissioner but where there is no risk to road safety and no commercial gain	SERIOUS to MODERATE
Persistent offending/conduct where there is no risk to road safety and no commercial gain but where there are numerous balancing features	MODERATE to LOW
Use of an unauthorised operating centre or breach of environmental conditions.	SERIOUS to LOW

- See:
1. 2000/041 HiKube Transport
  2. 2002/09 G Gollop
  3. 2004/255 M Oliver
  4. 2004/426 EA Scaffolding
  5. 2005/537 West Mix
  6. 2005/087 Paul Duckmanton t/a Cartrans
  7. 2006/445 J & CM Smith
  8. 2008/342 Alistair James Brown t/a Browns of Edinburgh
  9. 2009/528 KHJ Ltd
  10. 2010/002 Colin Fletcher t/a MCKUK Haulage
  11. 2010/004 Paul Fletcher and David Doring t/a Doring Transport

## MAINTENANCE

BALANCING FEATURES	NEGATIVE FEATURES
<ul style="list-style-type: none"> <li>● No "S" marked prohibitions</li> </ul>	<ul style="list-style-type: none"> <li>● Road safety critical defects on any vehicle or trailer in service</li> </ul>
<ul style="list-style-type: none"> <li>● Low prohibition rate</li> </ul>	<ul style="list-style-type: none"> <li>● Any "S" marked prohibition</li> </ul>
<ul style="list-style-type: none"> <li>● Above average first time pass rate at MOT</li> </ul>	<ul style="list-style-type: none"> <li>● Failure to properly maintain vehicles and/or trailers to gain a commercial advantage</li> </ul>
<ul style="list-style-type: none"> <li>● Previous long standing and unblemished maintenance record</li> </ul>	<ul style="list-style-type: none"> <li>● False maintenance records</li> </ul>
<ul style="list-style-type: none"> <li>● No road safety critical defects</li> </ul>	<ul style="list-style-type: none"> <li>● Long standing defects not being rectified at subsequent safety inspections</li> </ul>
<ul style="list-style-type: none"> <li>● No maintenance failings as a result of trying to gain a commercial advantage</li> </ul>	<ul style="list-style-type: none"> <li>● Safety inspection records not properly or fully completed</li> </ul>
<ul style="list-style-type: none"> <li>● Willingness to take advice from VOSA and to act promptly upon that advice</li> </ul>	<ul style="list-style-type: none"> <li>● Safety inspection records does not include declaration of roadworthiness</li> </ul>
<ul style="list-style-type: none"> <li>● Swift proactive measures to improve maintenance</li> </ul>	<ul style="list-style-type: none"> <li>● Incomplete safety inspection records and history</li> </ul>
<ul style="list-style-type: none"> <li>● Evidence that maintenance systems and procedures are constantly being monitored, supervised and reviewed.</li> </ul>	<ul style="list-style-type: none"> <li>● Stated safety inspection intervals being exceeded</li> </ul>
<ul style="list-style-type: none"> <li>● All maintenance related paperwork properly completed, certified and filed after checked by responsible person.</li> </ul>	<ul style="list-style-type: none"> <li>● No, or ineffective, forward planning of maintenance</li> </ul>
<ul style="list-style-type: none"> <li>● Robust driver walk round training</li> </ul>	<ul style="list-style-type: none"> <li>● Incomplete and/or ineffective driver defect reporting system</li> </ul>
<ul style="list-style-type: none"> <li>● Robust driver defect reporting system</li> </ul>	<ul style="list-style-type: none"> <li>● Maintenance systems and procedures not being properly monitored and supervised</li> </ul>
<ul style="list-style-type: none"> <li>● Random recorded checks on drivers defect reporting system</li> </ul>	<ul style="list-style-type: none"> <li>● Defects identified by drivers not being shown as rectified and/or repeated noted on a number of consecutive occasions</li> </ul>
<ul style="list-style-type: none"> <li>● Proper forward planning of safety inspections</li> </ul>	<ul style="list-style-type: none"> <li>● Low MOT first time pass rate</li> </ul>
<ul style="list-style-type: none"> <li>● Vehicles and trailers maintained at notified intervals.</li> </ul>	<ul style="list-style-type: none"> <li>● Multiple failure items at MOT</li> </ul>
<ul style="list-style-type: none"> <li>● All defect rectification work being properly recorded and signed off.</li> </ul>	<ul style="list-style-type: none"> <li>● Prohibitions issued at MOT</li> </ul>
<ul style="list-style-type: none"> <li>● Proper and effective management control</li> </ul>	<ul style="list-style-type: none"> <li>● High prohibition rate</li> </ul>
<ul style="list-style-type: none"> <li>● Sufficient and effective changes made, with tangible evidence in support, to ensure compliance</li> </ul>	<ul style="list-style-type: none"> <li>● Lack of any, or effective, management control</li> </ul>

**MAINTENANCE  
STARTING POINTS FOR REGULATORY ACTION**

See also Annex 2

<b>CONDUCT</b>	<b>REGULATORY STARTING POINT</b>
Deliberate acts or omissions that compromise road safety and/or result in the operator gaining a commercial advantage	SEVERE to SERIOUS
Falsification of maintenance records to mislead an enforcement agency or a Traffic Commissioner	SEVERE to SERIOUS
Long history of maintenance non-compliance with little or no sign of improvement at the time of the public inquiry	SEVERE to MODERATE
Long history of maintenance non-compliance with evidence that maintenance standards are improving and will continue to improve after the public inquiry	SERIOUS to MODERATE
Several negative features, not already detailed above under "Conduct", but few balancing features at the time of the public inquiry	MODERATE
Several negative features, not already detailed above under "Conduct", but many balancing features at the time of the public inquiry.	MODERATE to LOW

- See:
1. 2000/057 Yorkshire Rider
  2. 2001/068 Dukes Transport
  3. 2002/025 HJ Lea Oakes
  4. 2003/142 Thames Bus Ltd
  5. 2003/194 Smith's Distribution Ltd
  6. 2005/087 P Duckmanton

## ANNEX 4 – DISQUALIFICATION

### SECTION 28 – THE GOODS VEHICLES (LICENSING OF OPERATORS) ACT 1995

28. (1) Where, under section 26(1) or 27(1), a traffic commissioner directs that an operator's licence be revoked, the commissioner may order the person who was the holder of the licence to be disqualified (either indefinitely or for such period as the commissioner thinks fit) from holding or obtaining an operator's licence; and so long as the disqualification is in force –
- (a) any operator's licence held by him at the date of the making of the order (other than the licence revoked) shall be suspended, and
  - (b) notwithstanding anything in section 13 or 24, no operator's licence may be issued to him.
- (2) If a person applies for or obtains an operator's licence while he is disqualified under subsection (1) –
- (a) he is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale, and
  - (b) any operator's licence issued to him on the application, or (as the case may be) the operator's licence obtained by him, shall be void.
- (3) An order under subsection (1) may be limited so as to apply only to the holding or obtaining of an operator's licence in respect of one or more specified traffic areas and, if the order is so limited –
- (a) paragraphs (a) and (b) of that subsection and subsection (2) shall apply only to any operator's licence to which the order applies, but
  - (b) notwithstanding section 5(4)(b), no other operator's licence held by the person in question shall authorise the use by him of any vehicle at a time when its operating centre is in a traffic area in respect of which he is disqualified by virtue of the order.
- (4) Where the traffic commissioner makes an order under subsection (1) in respect of any such person, the commissioner may direct that if that person, at any time or during such period as the commissioner may specify –
- (a) is a director of, or holds a controlling interest in –
    - (i) a company which holds a licence of the kind to which the order in question applies, or
    - (ii) a company of which such a company is a subsidiary, or

- (b) operators any goods vehicles in partnership with a person who holds such a licence,

that licence of that company or, as the case may be, of that person, shall be liable to revocation, suspension or curtailment under section 26.

- (5) The powers conferred by subsections (1) and (4) in relation to the person who was the holder of a licence shall be exercisable also –
  - (a) where that person was a company, in relation to any director of that company, and
  - (b) where that person operated vehicles under the licence in partnership with other persons, in relation to any of those other persons;

and any reference in this section or in section 26 or 29 to subsection (1) or (4) above includes a reference to that subsection as it applies by virtue of this subsection.

- (6) The traffic commissioner by whom any order disqualifying a person was made under subsection (1) may at any time –
  - (a) cancel that order together with any direction that was given under subsection (4) when the order was made;
  - (b) cancel any such direction; or
  - (c) with the consent of the person disqualified, vary the order or any such direction (or both the order and any such direction).
- (7) Where an operator's licence is suspended under this section, the licence remains in force during the time of its suspension subject to the limitation that no vehicles are authorised to be used under it.
- (8) For the purposes of this section a person holds a controlling interest in a company if he is the beneficial owner of more than half its equity share capital (as defined in section 744 of the Companies Act 1985).



## SECTION 28 – THE TRANSPORT ACT 1985

- (1) Where the traffic commissioner for any traffic area revokes a PSV operator's licence, he may order the former holder to be disqualified, indefinitely or for such period as he thinks fit, from holding or obtaining a PSV operator's licence.
- (2) So long as a disqualification imposed under subsection (1) above is in force with respect to any person,
  - (a) any PSV operator's licence held by him at the date of the making of the order under subsection (1) above (other than the licence revoked) shall be suspended (that is, shall remain in force subject to the limitation that no vehicles are authorised to be used under it); and
  - (b) notwithstanding section 14(4) of the 1981 Act, no PSV operator's licence may be granted to him.
- (2A) If a person obtains a PSV operator's licence while he is disqualified under subsection (1) above, the licence shall be void.
- (3) An order under subsection (1) above may be limited so as to apply only to the holding or obtaining of a PSV operator's licence in respect of the area of one or more specified traffic commissioners and, if the order is so limited, subsection (2) above shall apply only to any PSV operator's licence to which the order applies.
- (4) Where a traffic commissioner makes an order under subsection (1) above with respect to any person, he may direct that if that person, at any time during such period as he may specify—
  - (a) is a director of, or holds a controlling interest in—
    - (i) a company which holds a licence of the kind to which the order applies; or
    - (ii) a company of which a company which holds such a licence is a subsidiary; or
  - (b) operates any public service vehicles in partnership with a person who holds such a licence;

the powers under section 17(2) of the 1981 Act (revocation, suspension, etc., of PSV operators' licences) shall be exercisable in relation to that licence by the traffic commissioner by whom it was granted.

- (5) The powers conferred by this section in relation to the person who was the holder of a licence shall be exercisable also—

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- (a) where that person was a company, in relation to any officer of that company; and
  - (b) where that person operated the vehicles used under the licence in partnership with other persons, in relation to any of those other persons and any reference in subsection (6A) below to subsection (1) above or to subsection (4) above includes that subsection as it applies by virtue of this subsection.
- (6) A traffic commissioner shall not make any such order or give any such direction without first holding an inquiry if any person affected by the proposed order or direction requests him to do so.
- (6A) The traffic commissioner by whom any order disqualifying a person was made under subsection (1) above may at any time—
- (a) cancel that order together with any direction that was given under subsection (4) above when the order was made;
  - (b) cancel any such direction; or
  - (c) with the consent of the person disqualified, vary the order or any such direction (or both the order and any such direction).
- (7) For the purposes of this section a person holds a controlling interest in a company if he is the beneficial owner of more than half its equity share capital.