



SENIOR TRAFFIC COMMISSIONER

Statutory Document No.1

GOOD REPUTE AND FITNESS

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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GUIDANCE

1. The Senior Traffic Commissioner for Great Britain issues the following Guidance under section 4C(1) of the Public Passenger Vehicles Act 1981, as to the way in which the Senior Traffic Commissioner believes that traffic commissioners should interpret the law in relation to the requirements to be of good repute and or fitness¹.

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

General Provisions

2. Section 8(4) requires an applicant to provide any further information which a commissioner may reasonably require in relation to the application and in particular any information specified in paragraph 1 of Schedule 2. This includes particulars of notifiable convictions which have occurred during the preceding five years and relevant activities carried out at any time before the application by the applicant, any company of which the applicant is or has been a director, where the applicant is a company any person who is its director or any other company linked with that director, any member of a partnership, any parent company.
3. Section 9(1) requires an applicant to inform a traffic commissioner of a notifiable conviction within the meaning of paragraph 4 of Schedule 2, and/or the issue of a notifiable fixed penalty, which occurs between the date of making the application and its disposal. Section 9(2) requires an applicant for a standard licence to notify a commissioner of any change in information supplied under section 8 about the nominated transport manager, which occurs between the date of making the application and its disposal.

Restricted Licences

4. Section 13B of the Act requires that an applicant for a restricted licence should not be unfit to hold an operator's licence by reason of (a) any activities or convictions of which particulars may be required to be given under section 8(4) by virtue of paragraphs 1(e) or (f) of Schedule 2, or (b) any conviction required to be notified in accordance with section 9(1) (see below). An operator's fitness might be subject to material change. A restricted licence holder must also meet the requirements of sections 13C and, if the traffic commissioner thinks fit, the requirements of section 13D.

Standard Licences

5. Section 13(1) of the Act requires the applicant to satisfy the traffic commissioner that the requirements of section 13A and C are met. Section 13A(2)(a) contains a requirement that an applicant for a standard licence be of good repute (in accordance with paragraphs 1 to 5 of Schedule 3). Section 13A(3) requires that a designated transport manager must meet the requirements of Article 4 including;

¹ See Statutory Guidance and Statutory Directions on the Principles of Decision Making & Concept of Proportionality

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- to be of good repute (in accordance with paragraphs 1 to 5 of Schedule 3);
 - in the case of an external transport manager, is not prohibited by a traffic commissioner from acting as a transport manager.
6. Action may be taken against a licence under section 26(1)(b) for a failure to meet the requirements of a licence condition. It is a condition for standard licence operators to inform the traffic commissioner within 28 days of any change to:
- the name and legal form of the undertaking;
 - the address of the establishment;
 - matters affecting good repute
 - matters affecting financial standing
 - matters affecting professional competence
 - the transport manager's good repute and/or professional competence
 - the type of authorisation, number of vehicles etc.
7. Section 13A(2) of the 1995 Act states that an applicant for a standard licence must be of good repute. Section 27(1) states that a standard licence must be revoked if it appears to the traffic commissioner that the licence holder is no longer of good repute
8. Paragraph 1 of Schedule 3 gives traffic commissioners discretionary powers to have regard to any matter in determining whether individuals or companies are of good repute either upon application or at any time during the life of the licence but in particular must have regard to any relevant convictions (see below) of the individual or company/directors, employees/officers, or agents.
9. Under paragraph 2 of Schedule 3 a traffic commissioner must conclude that an individual is not of good repute if he or she has a) more than one conviction for a serious offence or b) has been convicted of road transport offences². More than one road transport offence is required for a mandatory finding of loss of good repute.
10. A serious offence is defined as any conviction where one of the following punishments has been imposed:
- Imprisonment exceeding three months;
 - A fine exceeding level 4 on the standard scale³ currently £2500
 - A community service order (or equivalent) requiring unpaid work for more than 60 hours;
 - Any punishment outside the UK corresponding to the above.

² These provisions were amended by the Regulations to give effect to Council Directive 98/76/EC, amending Council Directive 96/26/EC. The 1996 Directive, as amended, distinguishes between "serious criminal offences" and "serious offences" relating to aspects of road transport, as specified in the Directive. The respective Regulations implementing the amended Directive imposed a mandatory finding that an operator is no longer of good repute if either criterion applies. Now see Regulations (EC) No. 1071/2009

³ www.sentencing-guidelines.gov.uk

11. A road transport offence is defined as follows:

- (a) an offence under the law of any part of the United Kingdom relating to road transport including, in particular:
 - (i) an offence relating to drivers' hours of work or rest periods, the weights or dimensions of commercial vehicles, road or vehicle safety or the protection of the environment; and
 - (ii) any other offence concerning professional liability; or
- (b) any corresponding offence under the law of a country or territory outside the United Kingdom.

12. For the purposes of both restricted and standard licences:

a. Relevant activities are defined as any activities in carrying on any trade or business in the course of which vehicles are operated, employment in that type of business or as a director of that type of business.

b. Relevant convictions can be summarised as any of the following offences committed by the applicant, any company of which the applicant is or has been a director, where the applicant is a company any person who is its director or any other company linked with that director, any member of a partnership, any parent company and any employee or agent:

- An offence under section 53 of the Road Traffic Act 1988 (plating certificates and goods vehicle test certificates);
- An offence in relation to a goods vehicle relating to the maintenance of vehicles in a fit and serviceable condition, or overloading, or the licensing of drivers;
- A drivers hours offence relating to a goods vehicle;
- An offence under sections 173 or 174 of the Road Traffic Act 1988 (forgery, false statements or the withholding of information) in relation to international permit (as was);
- An offence under section 3 of the Control of Pollution Act 1974, or section 2 of the Refuse Disposal (Amenity) Act 1978, or section 1 of the Control of Pollution (Amendment) Act 1989, or section 33 of the Environmental Protection Act 1990 or regulation 38 of the Environmental Permitting (England & Wales) Regulations 2010;
- An offence in relation to a goods vehicle in contravention of a provision prohibiting or restricting waiting vehicles made under the Road Traffic Regulation Act 1984 or a relevant traffic regulation order;

and the following offences committed by the applicant, any company of which the applicant is or has been a director, where the applicant is a company any person who is its director or any other company linked with that director, any member of a partnership, any parent company:

- An offence under the Goods Vehicles (Licensing of Operators) Act 1995, the Transport Act 1968 or the Road Traffic Act 1960 relating to licences or means of identification;
- An offence relating to section 13 of the Hydrocarbon Oil Duties Act 1979 (unlawful use of rebated fuel oil in relation to goods vehicles);
- An offence under section 74 of the Road Traffic Act 1988 (duty to keep inspection records in relation to goods vehicles).

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13. Under paragraph 5(2) spent convictions must be disregarded and a traffic commissioner has discretion to disregard any other offence as appropriate based on the time which has expired since the conviction subject to the guidance below.

Passenger Carrying Vehicles Legislation: The Public Passenger Vehicles Act 1981

General Provisions

14. Section 14(1) of the Public Passenger Vehicles Act 1981 states that an applicant for a standard or a restricted licence must be of good repute. Section 17(1) requires that a standard licence must be revoked if it appears to the traffic commissioner that the licence holder is no longer of good repute.

Restricted Licences

15. Section 14ZB requires that an applicant for a restricted licence should be of good repute and have appropriate financial standing. This may include consideration under section 14ZC(1)(b) of whether there will be adequate arrangements for securing compliance with the law relating to the operation of vehicles by reference to whether an applicant falls within the classification of a restricted licence as defined by section 13(3)⁴.

Standard Licences

16. Section 14ZA requires the applicant to satisfy the traffic commissioner that it has an effective and stable establishment; is of good repute; has appropriate financial standing; and is professionally competent. Section 14ZA(3) requires that a designated transport manager must meet the requirements of Article 4 including;
- to be of good repute (in accordance with paragraphs 1 to 5 of Schedule 3);
 - in the case of an external transport manager, not to be prohibited by a traffic commissioner from acting as a transport manager.
17. Action may be taken against a licence under section 17(3)(b) for a failure to meet the requirements of a licence condition. It is a condition for operators to inform the traffic commissioner within 28 days of any change to:
- the name and legal form of the undertaking;
 - the address of the establishment (standard licences);
 - matters affecting good repute
 - matters affecting financial standing
 - matters affecting professional competence (standard licences)

⁴ A restricted licence authorises the use of a) public service vehicles of eight passenger seats or less; and b) public service vehicles of up to sixteen passenger seats when i) used otherwise than in the course of a passenger carrying business; or ii) where the main occupation is not the operation of public service vehicles of more than eight passenger seats. In determining the main occupation of an applicant traffic commissioners may consider tax or other documentation including an individual's P60 and in the case of corporate entities may consider accounts, tax returns and documents such as the memorandum of association.

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- the transport manager's good reputation and/or professional competence (standard licences)
 - the type of authorisation, number of vehicles etc.
18. Paragraphs 1(1) and (2) of Schedule 3 give traffic commissioners discretionary powers to determine whether individuals or companies are of good reputation but in particular they must have regard to any relevant convictions (see below) of the individual or company/directors, employees/officers, or agents and also any previous conduct in relation to the operation of vehicles in the course of business.
19. Under paragraph 1(3) a traffic commissioner must conclude that an individual is not of good reputation if he or she has a) more than one conviction of a serious offence or b) has been convicted of road transport offences⁵. More than one road transport offence is required for a mandatory finding of loss of good reputation:
- A serious offence is defined as any conviction where one of the following punishments has been imposed:
- Imprisonment exceeding three months;
 - A fine exceeding level 4 on the standard scale⁶; currently £2500
 - A community service order (or equivalent) requiring unpaid work for more than 60 hours;
 - Any punishment outside the UK corresponding to the above.
20. Paragraph 1(5) defines a road transport offence as:
- An offence in the UK relating to road transport and including drivers' hours, overloading of commercial vehicles, road and vehicle safety;
 - Any corresponding offence outside the UK.
 - Under paragraph 1(8) spent road transport convictions must be disregarded subject to the guidance below.

Other Relevant Legislation: Convictions and infringements

The Rehabilitation of Offenders Act 1974

21. Section 1 of the Rehabilitation of Offenders Act 1974 provides that a person is to be treated as a rehabilitated person and applies equally in Scotland for the purposes of a traffic commissioner. A conviction is to be treated as "spent" provided that the following conditions are satisfied in relation to any offence or offences committed before or after commencement of the Act:
- the sentence imposed is not excluded from rehabilitation under the Act;

⁵ These provisions were amended by the Regulations to give effect to Council Directive 98/76/EC, amending Council Directive 96/26/EC. The 1996 Directive, as amended, distinguished between "serious criminal offences" and "serious offences" relating to aspects of road transport, as specified in the Directive. The respective Regulations implementing the amended Directive imposed a mandatory finding that an operator is no longer of good reputation if either criterion applies. Now see Regulations (EC) No. 1071/2009

⁶ www.sentencing-guidelines.gov.uk

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- since the conviction and during the relevant rehabilitation period, there has not been a subsequent conviction and sentence which is excluded from rehabilitation.
- 22.** The convictions of corporate bodies are not subject to the Rehabilitation of Offenders Act 1974.
- 23.** A person can only become a rehabilitated person if the sentence has been served in full or there has been full compliance with the requirements of the sentence. A failure to pay a fine or breach of a community penalty does not exclude a person from subsequently becoming rehabilitated. A sentence of imprisonment is deemed to have been served as at the time that the order requires the offender to be released from prison.
- 24.** Section 4 of the Act sets out the effect that rehabilitation has on an offender. A person who has become a rehabilitated person shall be treated for all purposes in law as a person who has not committed or been charged with or prosecuted for, or convicted of or sentenced for the offences which were the subject of the conviction. The result is specifically limited and refers to convictions rather than the conduct itself:
- no evidence is admissible in any proceedings before a judicial authority in Great Britain to prove that the individual has committed or been charged with or prosecuted for or convicted of or sentenced for any offence which is the subject of the spent conviction; and
 - no question can be put to that individual in any such proceedings, which cannot be answered, without acknowledging or referring to a spent conviction.
- 25.** For the purposes of section 4 of the Act “proceedings before a judicial authority” include, in addition to proceedings before a court of law, proceedings before any tribunal, body or person having power:
- by virtue of any enactment, law, custom or practice;
 - under the rules governing any association, institution, profession, occupation or employment; or
 - under any provision of an agreement providing for arbitration with respect to questions arising under there;
 - to determine any question affecting the rights, privileges, obligations or liabilities of any person or to receive evidence affecting such matters.
- 26.** Section 5 sets out the rehabilitation periods as summarised in the attached Statutory Directions⁷. Section 6 sets out the rehabilitation period applicable where multiple convictions apply:
- where only one sentence covered by this Act is imposed the rehabilitation period is as set out at section 5.
 - where more than one sentence covered by this Act is imposed in respect of a conviction (whether or not in the same proceedings) the applicable rehabilitation period is that for the longer sentence.

⁷ Subject to the Legal Aid, Sentencing and Punishment of Offenders Act 2012

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- where a person is conditionally discharged or a probation order is made and after the end of the applicable rehabilitation period he is dealt with, in consequence of a breach of the order for the offence for which the order was made then he shall not be treated as having become rehabilitated until the end of the rehabilitation period for the new sentence.
 - If during the rehabilitation period the person convicted is convicted of a further offence (other than a summary offence) and no sentence excluded from rehabilitation is imposed any rehabilitation period which would end the earlier shall be extended so as to end at the same time as the other rehabilitation period.
 - the rehabilitation period applicable to another conviction cannot be extended by reference to an order imposing on a person any disqualification, disability, prohibition or other penalty.
- 27.** The provisions do not apply to a conviction in another country which would not have constituted an offence if it had taken place in any part of Great Britain.
- 28.** Whilst section 7(3) of the Rehabilitation of Offenders Act 1974 (as amended) allows a “spent” conviction to be admitted in evidence where the judicial authority, i.e. a traffic commissioner, is satisfied, in the light of any considerations which appear to the authority (traffic commissioner) to be relevant (including any evidence which has been or may thereafter be put before it), that justice cannot be done in the case except by admitting or requiring evidence relating to a person’s “spent” convictions, this is subject to the specific provisions relating to spent convictions in the Goods and PSV legislation, as above. Section 7(3) ensures that “spent” convictions stay “spent” unless it is in a class where it is permissible to do so and the party applying to put the “spent” conviction in (for example the Police or VOSA) can satisfy the traffic commissioner that there is no other way of doing justice.

Cautions

- 29.** The Criminal Justice and Immigration Act 2008 amends the Rehabilitation of Offenders Act 1974 to bring warnings, reprimands, simple cautions and conditional cautions within the scope of that Act. Section 8A and Schedule 2 of the Rehabilitation of Offenders Act 1974, as amended mean that reprimands and warnings are spent at the time they are given; conditional cautions are spent after three months. A person who is given a caution which is spent shall be treated for all purposes in law as a person who has not committed, been charged with or prosecuted for, or been given a caution for the offence and no evidence is admissible in any proceedings before a judicial authority in England and Wales to prove that person has committed, been charged with or prosecuted for, or been given a caution for the relevant offence. That person cannot be asked in the course of any proceedings any question which cannot be answered without acknowledging or referring to a spent caution or any ancillary circumstances.

Serious infringements

30. Annex IV of the Regulation (EC) 1071/2009 identifies the most serious infringements that must be considered by traffic commissioners for the purposes of Article 6(2)(a) relating to good repute⁸.

31. They are as follows

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.

32. Article 16 refers to the establishment of a National electronic register, which must contain

- i. the name and legal form of the undertaking;
- ii. the address of its establishment;

⁸ See Statutory Guidance and Statutory Directions on the Principles of Decision Making and the Concept of Proportionality on the approach to be taken

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

Interconnectivity of the National Registers between Member States

33. Regulation (EC) 1213/2010 requires that Member States to ensure that there is inter-connectivity between the various National Registers. Traffic commissioners may therefore be referred to incidents where an operator and/or transport manager has been convicted of a *serious criminal offence* or has incurred a penalty within the European Union 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.

Case Law

34. This Guidance may be subject to decisions of the higher courts and to subsequent legislation. As good repute and fitness are not defined in legislation the Senior Traffic Commissioner has extracted the following principles and examples from existing case law which apply to both⁹.

35. Whilst European law leaves the choice of form and methods for the implementation of a Directive to the particular Member State, European case law requires, in this instance the interpretation of 'road transport offences', to be consistent with the wording and purpose of the Directive so as to achieve the intended result (as per the third paragraph of Article 249 of the EC Treaty)¹⁰.

⁹ 2013/007 Redsky Wholesalers Ltd

¹⁰ Case C-106/89 Marleasing [1990] ECR I-4135 and Case C-334/92 Wagner Miret [1993] ECR I-6911

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This approach is supported by domestic case law¹¹. The EC legislation refers to “serious” road transport offences. It follows that traffic commissioners are not required to revoke licences for loss of good repute if operators are convicted of a number of minor road transport offences but might still take action in these cases under the existing discretionary powers in the legislation (see Article 6 at Annex 2). As a matter of consistency traffic commissioners have generally viewed as serious those offences which have a significant adverse impact in particular on:

- an operator’s fitness to hold a licence;
- road safety;
- the promotion of fair competition; and
- the protection of the environment.

36. Traffic commissioners must now approach the question of good repute by taking into account not only paragraphs 1-5 of Schedule 3 of the Goods legislation (and by analogy paragraph 1 of Schedule 3 of the PSV legislation) but also Article 6 of Regulation 1071/2009¹². They cannot review the merit of a criminal conviction¹³ but must consider the relative seriousness.

37. The provisions regarding road transport offences are entirely separate from the general provisions relating to serious offences. On the previous wording of the legislation the phrase “more than one conviction” did not require proof of different incidents or different days of commission or of hearing in court. On any view a second conviction makes the breach of the law the more serious, since the additional conviction indicates a repetition of wrong-doing which properly affects the issue of general good repute¹⁴. The Transport Tribunal has previously indicated that traffic commissioners should consider each conviction separately to determine its seriousness, e.g. adherence to the rules relating to drivers’ hours is fundamental to road safety¹⁵. However the case law importing a test of seriousness to road transport offences predates both the decision in *Crompton t/a David Crompton Haulage v Secretary of State for Transport* [2003] EWCA Civ 64 and 2002/217 *Bryan Haulage Ltd*, which in any event must now be read in the context of the directly applicable provisions of Regulation (EC) 1071/2009.

38. As can be seen the Road Transport Regulations 2011 did not amend paragraph 2 of Schedule 3 of the Goods Vehicles (Licensing of Operators) Act 1995 to include the word serious¹⁶. However as indicated above the Upper Tribunal expects traffic commissioners to take account of Article 6.1, subparagraph 3 (a), which refers to serious infringements of national rules, and (b) which refers to a serious criminal offence or a penalty for a serious infringement of Community rules. In relation to (b) the Regulations require the traffic commissioner to determine whether the loss of good repute would constitute a disproportionate response.

¹¹ *Litster v. Forth Dry Dock and Engineering Company Ltd* (1990) 1 AC 546, and *Pickstone v Freemans plc* (1989) AC 66 and *Clyde v Eagle Star Insurance Co* (1988) 4 All ER 417

¹² 2012/034 *Martin Joseph Formby t/a G&G Transport*

¹³ *Nottingham City Council v Farooq (Mohammed)* (1998) *The Times*, 28th October

¹⁴ 2000/009 & 2000/010 *J C Stephenson & T E Turner* (trading as J & T Transport) and *Thomas McHugh*

¹⁵ 2001/074 *B E Clark*

¹⁶ 2012/050 *Charlie Roberts Ltd t/a MAN Euro applies Stephenson & McHugh* but only so far as to define “serious offence” under Schedule paragraph 2(a) and “more than one conviction”. In respect of the remainder of this decision the law was more fully considered in 2010/025 *Skip It (Kent) Ltd and Others*

39. Traffic commissioners should be careful to distinguish between the position of a company and individuals such as directors due to the provisions relating to mandatory loss of reputation. Convictions of a company's officers, servants or agents, however, may be relevant. The minimum reputation requirement will not be satisfied if relevant individuals have been convicted of serious criminal offences. That minimum requirement of good reputation cannot be reduced by reference to "proportionality"¹⁷.
40. Clearly an application form cannot envisage every situation, for instance where serious convictions are not necessarily notifiable¹⁸ or where convictions are not specifically referred to in the schedules. A traffic commissioner cannot be expected to overlook facts which might be relevant to future compliance¹⁹. The undertakings specified on the licence, however, include a commitment to report convictions recorded against the licence holder or employees or agents of the licence holder. An applicant or operator can be taken to be aware of the various guidance documents issued on behalf of the Senior Traffic Commissioner²⁰. The Schedules in the Acts give traffic commissioners a wide discretion so that they 'may have regard to any matter' in determining whether an applicant is of good reputation and can take into account any other information which appears to them to relate to the fitness of the individual to hold a licence. For example where operators are found to be in breach of the voluntary guidelines on the carriage of passengers to designated sporting events in England and Wales (see Annex 3) traffic commissioners can record an additional condition against the operator and can take subsequent action for failure to adhere to that condition. The wording of the general conditions on standard licences explicitly imposes a duty to inform the traffic commissioner of any events affecting good reputation including convictions listed in the schedules.
41. Traffic commissioners are not limited to the circumstances of a particular offence but can and will look at the conduct involved²¹. They can and will, for instance, consider general conduct where the operator was well aware of the commercial advantages that he was obtaining by reason of operating outside the operator licensing system and was not operating on a level playing field with his competitors²² such as fraud and breach of contract²³. Traffic commissioners may examine matters where there is no conviction e.g. relevant charges left on the Crown Court file or a Police report of a relevant offence. Traffic commissioners are entitled 'to take into account all reports concerning speeding or overloading when considering an operator's fitness to hold a licence'.²⁴ Other conduct such as a lack of co-operation and/or honesty during the course of the public inquiry will also be relevant. It is incumbent of course on an operator to ensure that prohibitions are cleared before using a relevant vehicle²⁵.

¹⁷ 2008/580 TS Dhaliwal, See Statutory Guidance and Statutory Directions on the Principles of Decision Making

¹⁸ 2001/044 N Hazel trading as JRS Freight (sentence of 46 months imprisonment for wounding with intent)

¹⁹ 2009/528 KHJ Ltd

²⁰ 2012/346 MGM Haulage & Recycling Ltd

²¹ 2010/367 Aspey Trucks Ltd considering the circumstances surrounding a conspiracy to supply Class B drugs

²² 2006/73 AG Everett

²³ 2010/058 Asif Mohammed Din t/a Ribble Valley Private Hire – unauthorised sub-contracting and use of drivers with no CRB checks for taxi work

²⁴ 2001/010 T Smith

²⁵ 2006/487 J & CM Smith

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42. 'Fronting', where a person, partnership or company, which does not have an operator's licence, uses the operator's licence held by another entity to conceal the fact that they are behaving in a way which requires them to have an operator's licence of their own, is considered to be serious. Fronting deprives the traffic commissioner of the opportunity to oversee an 'operator'. 'Fronting' is aggravated and very much more serious where it is apparent that the entity hiding behind the legitimate 'front' would be unlikely to obtain or would be debarred from holding their own operator's licence. The Upper Tribunal has given clear guidance that evidence of fronting can, on its own, provide justification for deciding that the operator being used as a 'front' has lost its good repute²⁶.
43. It is clear from the case law that the loan of discs is a serious matter²⁷ as is the use of out of date discs²⁸. It is incumbent on an operator who displays a disc from another operator to provide a paper trail to show that the use is legitimate²⁹; simply relying on an assertion is not sufficient³⁰. If an operator is found to have deliberately not paid vehicle excise duty it is open to conclude that there has been tax evasion³¹, as with the persistent use of untaxed vehicles³². Traffic commissioners are likely to reach similar conclusions where untaxed fuel is found in an operator's vehicles (and HMRC may also impose penalties)³³. In such circumstances traffic commissioners will give very serious consideration as to whether operators can continue to satisfy the repute requirement.
44. Adherence to the rules relating to drivers' hours is fundamental to road safety. The responsibility for ascertaining what is required and for complying with those requirements lies with the operator³⁴. Whilst the task of ensuring compliance with those requirements can be delegated the responsibility cannot³⁵. Traffic commissioners can and will exercise their discretion in individual cases and are therefore entitled to conclude that convictions for this type of breach are serious road transport offences which could then lead to a loss of repute³⁶. In cases of persistent breaches of the drivers' hours' rules and tachograph regulations by drivers traffic commissioners will scrutinise the operator's arrangements for ensuring compliance expecting detailed evidence of those arrangements to be provided (rather than mere assertions being made). Where the traffic commissioner finds that the operator had knowledge of the breaches and failed to take sufficient and adequate action to prevent reoccurrence they will give serious consideration as to whether the operator can continue to satisfy the repute requirement. Similarly where the traffic commissioner finds that the

²⁶ 2011/357 Utopia Traction Ltd, 2012/071 SilvertreeTransport Ltd - Gives a further definition: 'fronting' occurs when appearances suggest that a vehicle, (or fleet), is being operated by the holder of an operators licence when the reality is that it is being operated by an entity, (i.e. an individual, partnership or company), which does not hold an operators licence and the manner in which the vehicle is being operated requires, if the operation is to be lawful, that the real operator holds an operator's licence. In which circumstances the traffic commissioner is entitled to take a serious view of such conduct.

²⁷ 2000/15 D Murphy, 2010/84 & 86 Coach Express Ltd & Others

²⁸ 2000/027 P Brown trading as Leroy Coaches

²⁹ 2010/084 & 86 Coach Express Ltd & Others

³⁰ 2011/058 Robert David Moore t/a RDM Travel

³¹ 2000/066 D Eccles

³² 2001/007 Alkaline UK (following a withdrawal of funds by an associated company)

³³ 2002/018 UK Plant & Haulage (Services)

³⁴ 2010/063 Cornelius Pryde Hart and Abigail Hart t/a Zulu's Minibus

³⁵ Harding v VOSA [2010] EWHC 713 (Admin) establishes that where a driver does not take the required rest period and has not kept a record of his reasons cannot rely on the exemption which allows derogation for safety reasons.

³⁶ 2001/074 Brian Edward Clark

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operator had no knowledge of the breaches they will also give serious consideration as to whether the operator can continue to satisfy the repute requirement as the operator should have been complying with the relevant undertaking. Missing mileage and a failure to retain or keep full records can often result in the remaining records being false as they may not show the true position³⁷. In cases of persistent breaches it may be difficult for an operator to contend that he has complied with his undertaking, as it requires a more rigorous regime³⁸.

45. A licence is issued to an operator on trust that the operator will comply with the requirements and that the application form has been fully and honestly completed. A failure to appoint a replacement transport manager after a period of grace or to communicate with the traffic commissioner can amount to serious conduct on the part of the operator³⁹. A persistent failure to comply with undertakings, especially following a warning, may provide *compelling* reasons⁴⁰ to conclude that there has been a loss of repute/fitness. Traffic commissioners are entitled to have regard to first time annual test failures because they can be a barometer of the way in which the vehicle in question is being maintained⁴¹. Where traffic commissioners find that trust has been abused it may lead to a loss of repute, for example where there has been a failure to notify changes⁴². The honest and truthful completion of an application for a licence is fundamental to the operator licensing system. A traffic commissioner is entitled to conclude that an application form should have been checked by the applicant, a company secretary or by the directors/officers of the company⁴³ and that the vehicles will be operated by the person who has applied for the licence⁴⁴. Clearly the provision of false bank statements⁴⁵ or the failure to disclose relevant previous conduct such as convictions⁴⁶ or revocations⁴⁷ or insolvency⁴⁸ will entitle the traffic commissioners to question the operator's repute and is likely to have a serious impact upon that repute.
46. A history of involvement with dissolved companies without any evidence of actual wrongdoing will not of itself amount to a loss of repute⁴⁹. However the use of "Phoenix" arrangements to avoid previous liabilities may amount to unacceptable business practice⁵⁰. A phoenix company is where the assets of one limited company are moved to another legal entity (sometimes referred to as a 'pre-pack') but with no obligation to pay the failed company's debts. Commissioners will scrutinise such applications carefully to ensure the promotion of the principle of fair competition.
47. Dishonesty and illegal operation are very serious matters. Traffic commissioners are entitled to conclude that a person does not have the

³⁷ 2011/065 Deep Transport Ltd

³⁸ 2001/007 Alkaline UK

³⁹ 2012/001 Zeeshan Malik t/a Langston's Group

⁴⁰ 2011/036 LWB Ltd

⁴¹ 2012/023 JA & VC Fryer Farms

⁴² 2000/36 C Clark, 2008/410 Brian Hill Waste Management (prior to administration)

⁴³ 2000/041 Hi-Kube

⁴⁴ 2004/426 EA Scaffolding, 2004/255 M Oliver,

⁴⁵ 2006/313 D Lloyd

⁴⁶ 2000/059 Dolan Tipper Services

⁴⁷ 2004/367 N & S Gillman

⁴⁸ 2007/212 Huxley Travel

⁴⁹ 2010/067 Pemberton Transport Ltd

⁵⁰ 2010/083 Paul Frederick Boomer t/a Carousel and see Statutory Guidance and Statutory Directions on Legal Entities

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required repute where they have decided to operate without authorisation (either on an interim or full licence) particularly in the face of warnings not to⁵¹. All operators have a positive duty to co-operate with VOSA and the traffic commissioner⁵². Any attempt to deceive a traffic commissioner is serious conduct that cannot be condoned particularly where an operator and/or applicant relies on a document that has been altered so that it might mislead a traffic commissioner⁵³. Similarly operators who deliberately deceive and present false evidence to traffic commissioners either in correspondence or at public inquiry are also liable to prosecution through the criminal courts and are likely in serious cases to receive a custodial sentence.

- 48.** Other conduct such as a failure to heed instructions from enforcement or police officers⁵⁴ or attempts to circumvent the licensing system⁵⁵ will also have a serious impact on repute⁵⁶.
- 49.** Subject to the restrictions in the Goods and PSV legislation referred to above any reference to “a conviction” is not the same as a court hearing resulting in a finding of guilt, for instance a conditional discharge is not strictly a conviction⁵⁷ (see above). The same will apply to other alternative court disposals including an absolute discharge. A discharge from a court will NOT be a disposal that renders a licence liable to automatic revocation but authorities are entitled to ask questions. The application of the Rehabilitation of Offenders Act 1974 can prove difficult when traffic commissioners are considering multiple offences and it is important to differentiate between summary only offences and offences which can or must be dealt with by the higher courts⁵⁸.
- 50.** Useful parallels can be drawn from other licensing regimes⁵⁹ when determining the relevance of previous convictions to proceedings before a traffic commissioner. Commissioners are reminded of the principles set out below when deciding whether to consider spent convictions:
- where a judicial authority is considering whether justice cannot be done in a particular case except by admitting evidence of spent convictions, it would be contrary to the purpose of the legislation to receive all spent convictions and then decide which ones to take into account;
 - when asked to provide information an enforcing authority should identify the issue to which the spent convictions would relate if they were admitted and then should not only limit disclosure to those convictions which are relevant but should also provide a covering note indicating in general terms the class, age and seriousness of each of those offences in order to help the licensing authority to decide whether, once it has heard the applicant on the matter, it wishes to be informed of the details of the spent convictions so that it may treat them as material convictions;

⁵¹ 2005/537 West Mix, 2002/027 D Broadie

⁵² 2010/064 JWF (UK) Ltd

⁵³ 2002/009 Gollop, 2005/087 P Duckmanton (maintenance records), 2002/075 Hazco Environmental Services (Drivers' hours)

⁵⁴ 2005/050 Rush Travel

⁵⁵ 2006/056 Paul Oven Transport, AG Everett (as above),

⁵⁶ Deep Transport Ltd (As above)

⁵⁷ R v Rupal Patel No 2006/4890/B5

⁵⁸ 2009/530 Boomerang Travel Ltd

⁵⁹ Adamson v Waveney District Council [1997] 2 All ER 898, where the court was concerned with the grant of hackney carriage licence to 'a fit and proper person'.

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- any advocate should indicate in general terms the class, age and seriousness of the offences in order to help a tribunal decide whether, once it has heard the applicant on the matter, it wishes to admit evidence of the convictions;
 - it may be that only some of the spent convictions should be received and the applicant should be given an opportunity to persuade the tribunal that any spent convictions which have been disclosed are either irrelevant or should not prejudice the application because of their age, circumstances or lack of seriousness;
 - the tribunal should come to its own dispassionate conclusion having regard to the interests of both the applicant and the public in whose interests the exceptional power to have regard to spent convictions is being exercised.
- 51.** Consequently the Upper Tribunal has commented that, in light of the statutory restrictions referred to above, it would be slow to accept that there are any circumstances in which a traffic commissioner may refer to spent convictions when considering loss of repute⁶⁰.
- 52.** Where the Rehabilitation of Offenders Act 1974 does not apply, for instance because of the length of sentence imposed, it is for the traffic commissioner to determine as a question of fact depending on the circumstances of each individual case, whether or not the commission of a particular offence remains a bar to the grant of an operator's licence⁶¹.

⁶⁰ 2000/055 Michael Leslie Smith t/a Mike Smith Transport

⁶¹ Martin Joseph Formby t/a G&G Transport (see above)

DIRECTIONS

- 53.** The Senior Traffic Commissioner for Great Britain issues the following Directions to traffic commissioners under section 4C(1) of the Public Passenger Vehicles Act 1981. The aforementioned Guidance relates to matters which may affect reputation and fitness. These Directions are addressed to the traffic commissioners in respect of the approach to be taken by staff acting on behalf of individual traffic commissioners and dictate the operation of delegated functions.

Basis of Directions

- 54.** 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 traffic commissioners in fulfilling their statutory functions.
- 55.** The difficulty in providing directions stems from the absence of a definition for 'good reputation' or 'fitness' within the legislation. The Guidance above cannot provide a definitive list of all conduct which might impact on reputation or fitness. Traffic commissioners must also decide when to exercise their discretion. The purpose of these Directions is to provide as much clarification as is possible and, they should be read in conjunction with the attached Guidance which offers useful examples by way of illustration. The attached Annex 1 summarises those examples. It sets out the starting point for submissions but the traffic commissioners can and might call for more information.

Submissions

- 56.** When processing an application if staff members find some adverse history, they will need to gather all the relevant facts surrounding the case and present it to the traffic commissioner so that they can decide on the appropriate action. When compiling a submission to a traffic commissioner members of staff should:
- Gather ALL relevant information.
 - Complete the template, provide facts, distinguishing information from evidence, and quote dates and licence number(s) if applicable, be precise and to the point.
 - Provide a recommendation which is fully supported by the relevant legislation.
- 57.** Members of staff should refer to the Guidance for examples of conduct which might impact on an operator/applicant's reputation. In general traffic commissioners will be assisted by any information relating to the following conduct:
- Convictions – remember the different application to individuals; is it a serious offence and/or a road transport offence?;
 - Previous revoked/curtailed or suspended licences;
 - Previous adverse history including warnings and/or public inquiry ;
 - Prohibitions;
 - Fixed Penalty Notices;
 - Bankruptcy, sequestration or liquidation cases;

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- Avoidance of debts (phoenix applications);
- Late payments;
- Inability to contact operator;
- Abusive behaviour towards enforcement officers and/or members of OTC staff;
- Failure to notify material and relevant changes;
- Regarding transport managers are there any instances where continuous and effective responsibility has not been exercised?;
- Unauthorised use of a place as an operating centre;
- Failure to fulfill a licence undertaking;
- The operator is no longer professionally competent;

The Senior Traffic Commissioner has indicated that, where there is intervention by the Health and Safety Executive, traffic commissioners only need to be notified of formal enforcement rather than a Fee for Intervention (FFI).

General changes which must be notified:

Conviction of operator	within 28 days
Conviction of employee	within 28 days
Bankruptcy of operator/partner/Director	within 28 days
Liquidation/administration/receivership/company voluntary arrangement (CVA)	before order/appointment is made
Change in name or legal form of undertaking	within 28 days
Death of operator/partner	as soon as possible
Change of licence type	Application required as no authority until grant
Change in operating centre	Application required as no authority until grant
Change in address of establishment	within 28 days
Change of director	as soon as possible
Change of partner	as soon as possible
Change in transport manager	within 28 days
Change in maintenance contractor/arrangements	as soon as possible
Removal of vehicle/trailer	within 28 days
Addition of vehicle/trailer	within 28 days if within the margin otherwise application required as no authority until grant

Where there is no specific timetable the Senior Traffic Commissioner considers that it would be reasonable to expect such changes to be notified within 28 days.

Rehabilitation

- 58.** Commissioners and their staff are specifically referred to the Guidance above which sets out the provisions of the Rehabilitation of Offenders Act 1974 as they apply to proceedings before a traffic commissioner and the principles which can be drawn from the available case law. Spent convictions should not generally be referred to or taken into account in respect of an operator appearing before a public inquiry but the conduct itself might be relevant (see below). Care must be taken when recording and retaining the details of the

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spent convictions to ensure that when the commissioner or their staff become aware that they are in possession of information about spent convictions that only the commissioner and a senior member of the Office of the Traffic Commissioner have access to those spent convictions.

- 59.** Ultimately the traffic commissioner retains a discretion to allow convictions and/or conduct to be considered, but must take into account the evidence and circumstances of the case, balancing that conduct against other relevant material such as the operator's record. A traffic commissioner also has discretion to disregard other convictions, which are not spent, applying the principle of proportionality. The relevant rehabilitation periods are set out below⁶² after which different offences are said to be "spent".

Where on a conviction the sentence (or equivalent) imposed is:	The rehabilitation period begins on conviction and lasts for:
Life imprisonment or imprisonment/ detention in a Young Offenders Institute (YOI)/ a sentence of preventative detention or a sentence of detention during Her Majesty's pleasure, FOR TERMS EXCEEDING 30 MONTHS	Excluded from rehabilitation
Imprisonment in a YOI, Corrective Training for MORE THAN 6 MONTHS but not exceeding 30 months	10 years*
Imprisonment NOT EXCEEDING 6 MONTHS	7 years*
Fine (or other order not specified below)	5 years*
Borstal Training	7 years
Detention (PCC(S)A 2000, s.91) under CYPA 933, s.53 for MORE THAN 6 MONTHS but not exceeding 30 Months	3 years
Detention under PCC(S)A 2000, s.91, s.53 for NOT MORE THAN 6 MONTHS	3 years
Detention in a YOI	3 years
Probation (Community) Order, where offender 18 years or over at date of conviction;	5 years
Where offender under 18 at date of conviction	2½ years from conviction or a period beginning with date of conviction and ending when order ceases to have effect (whichever is the longer)
Detention and Training Order under CDA 1998, S.73	In the case of a person aged 15 or over a date of conviction, 5 years if order was, 3½ years if it was not, for a term exceeding 6 months. In the case of a person under 15, a period beginning with date of conviction, and ending 1 year after the date on which the order ceases to have effect

⁶² The Rehabilitation of Offenders Act 1974 was amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012. Section 141 provides that these periods are to be treated retrospectively. The commencement date is pending.

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Secure Training Order, Bind Over (to keep the peace or be of good behaviour), Care Order, Supervision Order under PCC(S)A 2000, s.63(1), Care order under CYPA 1933, S.57, Supervision order under CYPA 1933 or CYPA 1963	1 year or duration of order (whichever is longer)
Attendance at an Attendance Centre	Duration of the order plus 1 year
Hospital Order (with or without restriction order)	5 years or duration of the order plus 2 years (whichever is longer)
Disqualification, disability, prohibition or other penalty	The duration of the order

- 60.** The Legal Aid, Sentencing and Punishment of Offenders Act 2012 will amend the rehabilitation period as follows:

Where on a conviction the sentence (or equivalent) imposed is:	The rehabilitation period begins on conviction and lasts for:	
	Adult	Offenders under 18
A custodial sentence EXCEEDING 30 MONTHS	Excluded from rehabilitation	Up to 48 months - The end of the period of 42 months beginning with the day on which the sentence (including any licence period) is completed
A custodial sentence MORE THAN 6 MONTHS but not exceeding 30 months	The end of the period of 48 months beginning with the day on which the sentence (including any licence period) is completed	The end of the period of 24 months beginning with the day on which the sentence (including any licence period) is completed
A custodial sentence NOT EXCEEDING 6 MONTHS	The end of the period of 24 months beginning with the day on which the sentence (including any licence period) is completed	The end of the period of 18 months beginning with the day on which the sentence (including any licence period) is completed
Community or youth rehabilitation order	The end of 12 months beginning with the day provided for by or under the order as the last day on which the order is to have effect.	The end of 6 months beginning with the day provided for by or under the order as the last day on which the order is to have effect.
A fine	The end of 12 months beginning with the date of conviction	The end of 6 months beginning with the date of conviction
Compensation Order	The date on which the payment is made in full	
A relevant order (e.g. Conditional Discharge, Bind over to keep the peace, Hospital Order, Supervision or Care Order, Disqualification, disability, prohibition or other penalty - this list is not exhaustive)	The day provided for by or under the order as the last day on which the order is to have effect	

61. The convictions of corporate bodies are not subject to the Rehabilitation of Offenders Act 1974. Since section 4 of the Rehabilitation of Offenders Act 1974 states that a person who has become a rehabilitated person shall be treated for all purposes in law as though there has been no conviction against that person, no evidence is admissible in any proceedings to prove that conviction where it is “spent” and an individual cannot be questioned in any proceedings if the questions cannot be answered without referring to a “spent” conviction. This provision relates to proceedings before any judicial authority including a Tribunal, and as a result, includes proceedings before traffic commissioners. Commissioners and their staff should therefore satisfy themselves as to whether:

- the sentence imposed is not/excluded from rehabilitation under the Act;
- since the conviction and during the relevant rehabilitation period, there has not been a subsequent conviction and sentence which is excluded from rehabilitation.
- was the sentence served in full? (A sentence of imprisonment is deemed to have been served as at the time that the Order requires the offender to be released from prison.)

Any decision on whether a spent conviction is to be considered in assessing repute or fitness must be referred to the traffic commissioner.

62. Whilst in relation to repute a “spent” conviction shall be disregarded in so far as the actual recorded conviction is concerned, the traffic commissioner can have regard to any other information which appears to relate to the individual’s fitness to hold a licence (for example, a course of conduct which may be revealed by convictions for similar offences over a period of time, which demonstrates propensity). As a result, whether a “spent” conviction or caution should be raised with an operator must be referred to the traffic commissioner.

63. The final decision as to whether it may be relevant to the proceedings before the traffic commissioner and should, therefore be admitted notwithstanding that it is “spent”, is a matter for consideration only by the traffic commissioner. The traffic commissioner will need to be satisfied that there is no other way of doing justice in the case other than taking account of the spent conviction. Accordingly, in such cases, caseworkers must refer issues concerning the admissibility of spent convictions to the traffic commissioner for a preliminary ruling as to whether they should be taken into account. Each case will be considered on its own individual merits.

Most Serious Infringements

64. As stated above at paragraph 33, Regulation (EC) 1213/2010 requires that Members States ensure that there is inter-connectivity between the various National Registers. Traffic commissioners may be referred to incidents where an operator and/or transport manager has been convicted of a *serious criminal offence* or has incurred a penalty within the European Union for a serious infringement of Community rules. Where there has been one or more most serious infringements that must be considered by traffic commissioners for the purposes of Article 6(2)(a) relating to good repute and where the traffic

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commissioner determines that it is not proportionate to call to a public inquiry then the reasons must be fully recorded by the traffic commissioner.

Endorsements

65. Where an endorsable offence has been committed call up letters and correspondence should refer to endorsements rather than convictions. Details of some driving offences may remain on a driving licence for longer than the 4 years which staff members are used to dealing with, for instance an endorsement for a drink or drugs related road traffic offence remains on a driving licence for 11 years. Another example might be where a court imposes a fine for travelling at excessive speed and endorses a licence. If it was committed, say 8 years ago, it would be more than 5 years old and the driver would be treated as rehabilitated. If, however, there was another similar offence 4 years earlier, both offences would strictly be disclosable under the provisions of the Rehabilitation of Offenders Act 1974.
66. Current DVLA practice is to hold endorsements for between 4 or 11 years depending on the offence, in line with section 45 of the Road Traffic Offenders Act 1988. It follows that information about disclosable endorsements which might be put before the criminal courts for the purposes of sentencing following similar offences may not be brought to the attention of the traffic commissioner.

Driver Certificate of Professional Competence (CPC)

67. Vocational bus and coach drivers have been required to hold a Driver's Certificate of Professional Competence since 10 September 2008 and vocational HGV drivers from 10 September 2009. Those who already held a licence at those dates were exempt until 10 September 2013 and 10 September 2014 respectively. The Vehicle Drivers (Certificates of Professional Competence) Regulations 2007 allow some specific exemptions but they only apply in particular circumstances. Regulation 3(g) replicates a 'tools of the trade' exemption in other legislation so that drivers of vehicles which are carrying equipment or material that will be used by that driver at the destination are not required to hold a Driver CPC provided that driving the vehicle is not the driver's main occupation. Where a driver is found to be driving and does not comply with the regulations then the traffic commissioner will require an explanation from the operator as well as the driver, and as appropriate, the transport manager about the steps taken to ensure that drivers of authorised vehicles have the necessary qualification. Failure by the operator to take the appropriate steps can result in regulatory action being taken against the operator.

Previous decisions

68. Care needs to be taken before any weight is attached to a matter that may be regarded as stale where there is an inherent objective to achieve fairness. Sometimes the letter of the Act allows consideration of a conviction, but the spirit of the legislation suggests otherwise. As a general guideline, where the operator has appeared before a traffic commissioner⁶³ at a previous hearing or hearings, it is both fair and proper that previous decisions from earlier hearings

⁶³ See Statutory Guidance on Delegations for the impact and limitations of delegated powers

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are made available provided of course that the principles of the legislation are adhered to.

Attempts to avoid Liabilities

69. Not all legitimate businesses succeed at the first attempt. Companies can fail for any number of reasons and there are times when directors find their company can no longer trade. There is no legal prohibition to forming a new company from the remnants of a failed business. A “phoenix” company is where the assets of one limited company are moved to another legal entity (sometimes referred to as a ‘pre-pack’⁶⁴) but with no obligation to pay the failed company’s debts⁶⁵. Often some or all of the directors remain the same. A director of a failed company can become a director of a new company unless he or she:

- is subject to a disqualification order or undertaking, or
- is personally adjudged bankrupt, or
- is subject to a bankruptcy restrictions order or undertaking.

70. These arrangements can allow a business to start again with the profitable elements of the failed business and are likely to seek to operate in the same sphere as its predecessor. In some cases, the new company has the same or a similar name to the failed business.

71. Some unscrupulous individuals seek to avoid responsibility for their liabilities by putting their companies into insolvency or use a Company Voluntary Arrangement (CVA) or Individual Voluntary Arrangement (IVA) to continue to trade whilst insolvent. Once a company enters insolvency or liquidation proceedings, the creditors will only be paid in order of priority from whatever remaining company funds are still available. (Trade creditors often receive only a portion of the money owed, which can impact on their ability to trade, and they may feel pressured to agree to a voluntary arrangement.) The directors may therefore seek to transfer the assets of a failing company for below their market value before insolvency and reduce the funds available to creditors when the original company is declared insolvent. These tactics may result in an unfair competitive advantage over other operators.

72. Whilst the Insolvency Act 1986 has made it more difficult for directors to do this by introducing stricter rules over the insolvency process and requiring liquidators to obtain the best price for a business and its assets there are still a number of unscrupulous individuals who still seek to avoid their legal responsibilities. Traffic commissioners and their staff are reminded that it is an offence for a director of a company, which has gone into insolvent liquidation, to be a director of a company with the same or a similar name, or concerned in its management, without the leave of a court etc. The liquidator can also take action to recover funds where the failed company has entered into a sale at a lower than market value at a time when the company was unable to pay its debts.

73. A phoenix company may be a legitimate business but traffic commissioners will wish to satisfy themselves as to any application which has the characteristics of

⁶⁴ See Statutory Guidance and Statutory Directions on Legal Entities

⁶⁵ See separate guidance on legal entities

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a phoenix application. Save in exceptional circumstances the directors of a company that goes into administration will have been aware that it was in financial difficulty for a sufficient period of time to enable them to inform the traffic commissioner of the material change in the company's financial position prior to administration⁶⁶. A failure to inform the traffic commissioner of a material change including for instance a CVA may lead to adverse conclusions being drawn against the fitness of those directors. Once an Administrator is appointed s/he must decide whether or not to carry on the road haulage business of the company. If s/he decides not to do so s/he should take immediate steps to surrender the licence and to return the discs for the authorised vehicles.

74. Members of staff acting on behalf of individual traffic commissioners should scrutinise any application carefully to find out why the previous company failed and to ensure that directors are not serial abusers of the phoenix company arrangements. They might for instance search the information available from Companies House and/or seek to obtain a status report from a credit ratings agency. The official receiver or insolvency practitioner has a duty to investigate the affairs of companies in compulsory liquidation and to report evidence of criminal offences to a prosecuting agency. Staff should attempt to obtain a copy of the relevant report and must refer it to the traffic commissioner where they have concerns about the application.

Transport Manager Declarations

75. In October 2011 transport managers were requested to complete and return a questionnaire in order to populate the national register. Some operators used this opportunity to change the transport manager details without making an application as they were required to do. The questionnaire specifically required the individual transport manager to only list those licences for which they had been *authorised*. Staff should be alive to this risk when making checks against the records. If there has been a false declaration this will need to be referred to the traffic commissioner to consider whether or not to take regulatory action in respect of the named CPC holder and/or the operator. A similar approach should be taken where the self-service facility has been used and there is no subsequent application lodged.

⁶⁶ See Statutory Guidance and Statutory Directions on Legal Entities

ANNEX 1: STARTING POINT FOR SUBMISSIONS

Examples of conduct which might be relevant (not an exhaustive list)	
Abusive behaviour towards enforcement officers and/or members of OTC staff	
Attempts to circumvent the licensing system	
Bankruptcy, sequestration or liquidation cases	
Changes, failure to notify of	Conviction of operator
	Conviction of employee (see paragraph 8)
	Bankruptcy of operator/partner/Director
	Liquidation/administration/receivership
	Death of operator/partner
	Change of licence type
	Change in Operating Centre
	Change of Director
	Change of Partner
	Change in Transport Manager
	Change in legal form
	Change in maintenance contractor/arrangements
	Removal of vehicle/trailer
	Addition of vehicle/trailer
	Conviction of operator
Charges left on file	
Commercial advantage; the operator was aware that he was not operating on a level playing field with his competitors	
Convictions	<p>Section 53 of the Road Traffic Act 1998 (plating certificates and goods vehicle test certificates). An offence in relation to a goods vehicle relating to the maintenance of vehicles in a fit and serviceable condition, or overloading, or the licensing of drivers. A drivers' hours offence. Sections 173 or 174 of the Road Traffic Act 1988 (forgery, false statements or the withholding of information) in relation to international permit. Section 3 of the Control of Pollution Act 1974. Section 2 of the Refuse Disposal (Amenity) Act 1978. Section 1 of the Control of Pollution (Amendment) Act 1989. Section 33 of the Environmental Protection Act 1990; contrary to a provision prohibiting or restricting waiting vehicles under the Road Traffic Regulation 1984 or a relevant traffic regulation order.</p>
	<p>An offence under the Goods Vehicles (Licensing of Operators) Act 1995, the Transport Act 1968 or the Road Traffic Act 1960 relating to licences or means of identification; An offence relating to section 13 of the Hydrocarbon Oil Duties Act 1979 (unlawful use of rebated fuel oil in relation to goods vehicles); An offence under section 74 of the Road Traffic Act 1988 (duty to keep inspection records in relation to goods vehicles)</p>

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	Individual: Is there more than one conviction for a serious offence or has the individual been convicted of road transport offences?
	road transport offence in UK or corresponding offence outside the UK
	serious offence – where one of the following punishments has been imposed: Imprisonment exceeding three months; A fine exceeding level 4 on the standard scale; A community service order (or equivalent) requiring unpaid work for more than 60 hours; Any punishment outside the UK corresponding to the above.
Co-operation, lack of	
Curtailment of licence	
Discs, loan of	
Discs, use of out of date	
Dishonesty during the course of the Public Inquiry	
Dishonesty in dealings with TC	
Drivers' hours and tachograph offences	
Failure to declare relevant previous conduct	
Failure to notify changes	
False documents	
Fixed Penalty Notices	
Illegal operation	
Incorrect application form	
Instructions from enforcement agency or police, failure to heed	
Late payments to TC	
Overloading	
Police report of a relevant offence	
Previous warnings	
Prohibitions, e.g. use of vehicle without clearing	
Revocation of licence	
Suspension of licence	
Tax evasion	
Transport Managers, previous instances where continuous and effective responsibility has not been exercised	
Unable to contact operator	
Untaxed vehicles, persistent use	
Untaxed fuel in an operator's vehicle	
Use of uninsured vehicle	
Use of vehicle out of test	
Vehicle Excise Duty, deliberate non-payment	

ANNEX 2: EU LEGISLATION

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

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

(b) be of good repute;

(d) have the requisite professional competence; and

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 may be 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 reputation 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 reputation would constitute a disproportionate response, it may decide that good reputation 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 reputation would constitute a disproportionate response, the conviction or penalty shall lead to the loss of good reputation;

(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 reputation. 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.

EU 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: GUIDELINES ON SPORTING EVENTS IN ENGLAND & WALES

The following Voluntary Guidelines on the carriage of passengers to designated sporting events in England and Wales remain current but are likely to be enhanced.

For some years the coach industry has complied with a voluntary code of practice whereby operators taking passengers to a designated sporting event meet certain guidelines set by the police. This has worked very well, and it has seldom been necessary for a traffic commissioner to take any further action against an operator who has contravened the guidelines. Nevertheless the police in England and Wales are concerned that football hooliganism is again on the increase, and have asked the commissioners to revise the guidelines. This has been done in conjunction with the Confederation of Passenger Transport (CPT).

PSV operators are reminded of the terms of section 1(1) of the Sporting Events (Control of Alcohol) Act 1985, as amended by the Public Order Act 1986, which prohibits the carriage of alcohol on a PSV that is being used for the principal purpose of carrying passengers for the whole or part of a journey to or from a designated sporting event.

A 'designated sporting event' generally means any association football match, whether national or international. The full legal definition of designated sporting events may be found in The Sports Grounds and Sporting Events (Designation Order) 1985, as amended by SI 1520/1987. It is an offence for an operator of a PSV (or his servant or agent) to knowingly cause or permit the carriage of alcohol on journeys to which these Regulations apply. In addition to these statutory provisions, the police have asked that operators comply with the following guidelines when conveying passengers to such sporting events:

- a. Coach operators taking bookings from groups of supporters are to notify the police liaison officer at the destination, at least 48 hours before the event, of the number of supporters expected to travel and the number of coaches booked.
- b. Coaches are not to stop within 10 miles of the venue either en route to or on departure from the event unless prior agreement is obtained from the local police liaison officer.
- c. Unless directed otherwise by a police officer, coaches may stop at premises where intoxicating liquor is sold only if it is sold ancillary to a substantial meal. Prior agreement for meal stops where alcohol is available should be sought from the operator's local police liaison officer.
- d. Coaches are to arrive at the venue no earlier than two hours before and not later than one hour before the scheduled start of the game, unless otherwise directed by police.
- e. Coaches are not to set down or uplift passengers at any unauthorised locations without prior permission of the police.
- f. Coaches must leave the venue within one hour of the finish of the event.

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g. Intoxicating liquor must not be carried on coaches travelling to or from designated grounds. Operators will draw hirers attention to the requirements of the law, and drivers shall, as far as reasonably practical, supervise boarding passengers and check that they are not obviously carrying intoxicating alcohol. Drivers will not be expected to carry out baggage or body searches, nor will they be expected to confiscate alcohol or to remove passengers without police assistance.

Operators are asked to comply with these guidelines on a voluntary basis. However if the police inform the Traffic Commissioner of any failure on an operator s part to comply with them the Commissioner will consider applying them as a formal condition to that operator s licence under the authority of Section 16(3) of the Public Passenger Vehicles Act.