



IPL HAULAGE LTD - OH1041011

SHEPPARD COMMERCIAL SERVICES LTD – OH1004096

PUBLIC INQUIRY IN BRISTOL

17 APRIL 2018

DECISION

The Goods Vehicles (Licensing of Operators) Act 1995 (the “Act”)

On a finding of loss of good repute, Ian Percival’s repute is forfeit. He is disqualified from acting as a transport manager in any member state for a period of 2 years from 30 June 2018.

On a finding of loss of professional competence licence OH1041011, IPL Haulage Ltd is revoked with effect from 30 June 2018.

On a finding of loss of good repute, licence OH1041011, IPL Haulage Ltd, is revoked with effect from 30 June 2018.

On a finding of loss of good repute, licence OH1004096, Sheppard Commercial Services Ltd, is revoked with effect from 30 June 2018.

BACKGROUND

1. IPL Haulage Ltd (“IPL”) is the holder of a Standard International operator’s licence granted on 25 January 2005 authorising the use of forty vehicles and eighty trailers. The statutory director and transport manager is Ian Percival. Thirty five vehicles are recorded as in possession.

2. Sheppard Commercial Services Ltd (“SCS”) is the holder of a Standard National operator’s licence authorising the use of fifteen vehicles and fifteen trailers granted on 21 March 2002. The directors are Ian Percival and Graeme Roberts. Mr Roberts is also the listed transport manager. Messrs Percival and Roberts each own 50% of the business. Eleven vehicles are shown as in possession. SCS is the listed maintenance provider for IPL Haulage Ltd.
3. On 3 November 2017, vehicle EU08VXR belonging to IPL was issued with an “s-marked” prohibition having been found to be fitted with an emissions cheat device. The s-marking denotes a “significant failure in compliance systems”.
4. DVSA Vehicle Examiner Timothy Collins conducted an unannounced follow-up maintenance investigation at IPL on 15 January 2018. The following shortcomings were found
 - No regular brake testing indicated on PMI records
 - PMI records indicate items that should be identified by drivers on walk round checks
 - Driver defect recording system indicates reported defects not being rectified
 - Five roadside prohibitions in the last 12 months
5. In relation to the emissions cheat device, Vehicle Examiner Collins reported the following:

“The emulator was found under the floor of the nearside foot well. Mr Percival concedes the device was fitted to mask an AdBlue system defect to enable the vehicle to pass its MOT in October. Mr Percival took the decision based on a commercial need to get the vehicle back on the road to fulfil a contract. At the time IPL Haulage Ltd was waiting for delivery of replacement vehicles which were due in September 2017 but arrived October 2017. The removal process was not adhered to as the vehicle was removed of the operator’s licence within the month.”

6. In compiling the submission, the caseworker noted the director and shareholder links between IPL and SCS.
7. The DVSA report caused me to call IPL to public inquiry on the following grounds:

Section 26(1)(c)(iii) of the Act, that vehicles or drivers had been issued with prohibition notices;

Section 26(1)(f) of the Act, that any undertaking recorded in the licence had not been fulfilled relating to keeping vehicles fit and serviceable and that drivers would report defects effectively;

Section 27(1)(a) of the Act, that the operator may not be of good repute, of the appropriate financial standing or meet the requirements of professional competence;

Article 4.1(a) of EU Regulation 1071/2009, that the transport manager is not exercising continuous and effective control; and

Section 27(1)(b) of the Act, that the transport manager is not of good repute or not professionally competent.

8. I called SCS to public inquiry on the following grounds:

Section 26(1)(b) of the Act, that the operator failed to notify of events which affect good repute;

Section 27(1)(a) of the Act, that the operator may not be of good repute, of the appropriate financial standing or meet the requirements of professional competence;

9. Mr Percival was called separately to consider his repute as Transport Manager under Schedule 3 of the Act.

THE EVIDENCE

10. Mr Ian Percival attended the public inquiry for IPL represented by James Backhouse, solicitor. Mr Graeme Roberts attended for SCS unrepresented. I questioned the position of Mr Percival in relation to SCS. Mr Backhouse advised that he was a non-executive director. I indicated that my view was that he was a statutory director and as such an officer of SCS as well as IPL. Mr Backhouse insisted that his instructions were that Mr Roberts alone was to speak for SCS.

11. Proceedings were recorded and a transcript can be produced as required. I do not record all the evidence here, only that which is necessary to come to a decision.

The evidence in relation to Ian Percival and IPL

12. Mr Backhouse submitted that it was accepted that a device had been fitted. His client had been frank about that from the start. Mr Backhouse was concerned at the pejorative language used in relation to AdBlue devices and questioned why such defects should be treated differently to other breaches of Construction and Use Regulations. I should have regard to the state of knowledge in 2017. His client had watched the Dispatches documentary twice in the last week. Mr Backhouse reminded me that in law there were in effect two different levels of Construction and Use breach. There was a relatively minor offence in section 42 of the Road Traffic Act that was used in relation to, for example, insecure loads. To move to the more serious level, it would be necessary to show an adverse effect on emissions. His client had been at least indifferent to the effect of the device. It was unfair to take this prohibition out of context. Mr Percival didn't realise how serious it was at the time he

made the decision. Mr Percival had been in business since 1983 and I should consider proportionality in that context.

13. Mr Percival told me how he had started in 1983 as an owner driver. He had started with one eight-wheel tipper. He was now operating thirty-five vehicles and sixty-six trailers. He was based in Southampton where container work was the mainstay. A business needs to be of a certain size to attract contract work. He still employed his original drivers and his wife worked in the office; it was a family business. He has recently upgraded to international operations and had started to provide storage.
14. The company now needed to operate Euro-6 vehicles and he was renewing the fleet. There had been a delay in the DAF factory last September. September was a peak time of year for him marking the start of the Christmas build-up. If he declined work in September he would not be offered work in October, November and December. The truck concerned was now sold and exported. The truck going into limp-home mode had been a continuous problem. He believed he would be OK if he didn't take the vehicle into London. He had a conversation with a couple of lads and one of them sent him the number of a person who fitted emulators. The individual turned up on a Saturday morning and thought he was fitting devices to the entire fleet. Only one vehicle was fitted and it was intended to be only for four weeks. The root cause of the problem was an issue with the wiring loom that would cost around £3000 to replace which was more than the truck was worth. He hadn't foreseen the consequences.
15. Although the device had been under the floor, there had been no attempt to hide it. It was fitted next to the fuse board. SCS was the maintenance contractor. He spent lots with DAF repairing AdBlue and NOx problems. He had been unable to acquire software to dial into the engines. No AdBlue fixes could be done without going back to the main agent. The problem had been salt getting into the wiring loom. The use of AdBlue emulators was talked about casually in the industry.
16. Mr Percival was the owner and manager of the business - he referred to it as "my business". The business was proactive in what it was trying to achieve. A new electronic driver defect reporting system had been put in place. He had had an assistant transport manager for three years. This was a big improvement. They had implemented many changes. That individual had to leave and another CPC holder was starting next week. The company is also employing a new compliance manager.
17. I asked about the brake testing of trailers and was told they would in future be brake tested quarterly. They had been inspected in the yard but were now inspected in the workshop at SCS. I noted there had been a number of brake prohibitions on trailers whilst also noting that they had related to mechanical failures rather than performance issues. Mr Percival told me that trailers had been inspected in the yard previously because of the ease and effort required to take them to the workshop. Mr Backhouse submitted that the guidance was not widely followed.

18. I asked about the driver defect reporting system. Mr Percival told me the business was pretty much there now and the system was working. It was a phone app and drivers logged in when they came in to work. Drivers had to do a daily defect report, put the mileage in and sign the vehicle off as roadworthy before they could start their day. I asked about the significant number of prohibitions which appeared to be driver visible items. Mr Percival told me that drivers thought they were doing him a favour by getting the vehicle back to the base. I noted also that mechanical prohibitions seemed to be received in the period 6 to 8 weeks after the previous inspection and question whether the nine week interval was appropriate.
19. I returned Mr Percival to the issue of the AdBlue emulator. He told me customers put pressure on him at that time of year. There were no vehicles to spot-hire in Southampton in September. He had been given the name of "John the AdBlue man" and just phoned him up. He thought he had planned well with having new vehicles due to be delivered first of September. Customers put pressure on him.
20. The relationship with SCS came about because there was a general shortage of truck parking around Southampton. His current operating centre was up for redevelopment. He also struggled to get vehicles booked in for MOTs. He had an opportunity to purchase part of the SCS business. It came with parking and they can also get MOTs as it is a DVSA ATF. Vehicles could go in and be fixed on the same day whereas the DAF dealer used had vehicles off the road for three or four days. SCS workshops are open from 6 in the morning to 10 in the evening. He had a very small role in the business. He would meet Mr Roberts every 3 to 4 weeks and had no day-to-day involvement.

The evidence of Graeme Roberts and SCS

21. Graeme Roberts told me that he started as a driver and then moved in to the office for Securicor in the mid 90s in London. In 2002 he started Southampton Container Logistics Ltd. He acquired SCS in 2009.
22. IPL was treated as any other customer and were invoiced for work done. I asked about a transfer of £60,000 from IPL to SCS on 1 March which was returned on 31 March. Mr Roberts told me that he was concerned there may be some late payments in March and it may affect his ability to show financial standing. He saw Mr Percival as the reason that the company had been called to public inquiry and requested that he transfer funds to ensure financial standing was met. Mr Roberts told me that, at a previous public inquiry, Traffic Commissioner Miss Bell had been insistent that all finances were shown in the company account and that was why he had arranged the funds transfer.

Closing Submissions

23. Mr Backhouse submitted that Mr Percival was a self-made man. He had grown his business over a period of twenty-five years. That is not an easy thing to do. He is the controlling mind within the business. He had recognised the deficiencies within the driver defect reporting system and had invested in new technology to resolve it.
24. Mr Percival is very straightforward. He didn't claim any lack of knowledge. He wasn't trying to hide the device. In judging honesty, all the surrounding material should be taken in to account. He has been frank. He accepts that being the font of all knowledge within the business has not been 100% successful. He had previously had support and has found a replacement for that support. He has been around a long time and had no adverse history. Mr Percival is not an unsafe bet as a haulier. It was his life work and his livelihood. We all make mistakes. He had learnt two big lessons. The first was that he was too self-reliant. The second is that in solving a problem there can be unforeseen consequences.
25. There was no evidence of the emissions from this vehicle breaching the limits. The device kept the vehicle from entering limp mode.
26. Mr Percival accepts that he needs to review the inspection frequency, but the trailers spend much of their time parked at customers' premises. No prohibitable items were found at the fleet check. There was no strong indication that this was an un-roadworthy fleet. Trailers can be presented for a roller brake test loaded.
27. The operator was aware that he had put his good reputation at risk. It was one poor decision, not a long adverse history. He was aware that he was lacking the challenge of a transport manager to balance commercial and compliance pressures.

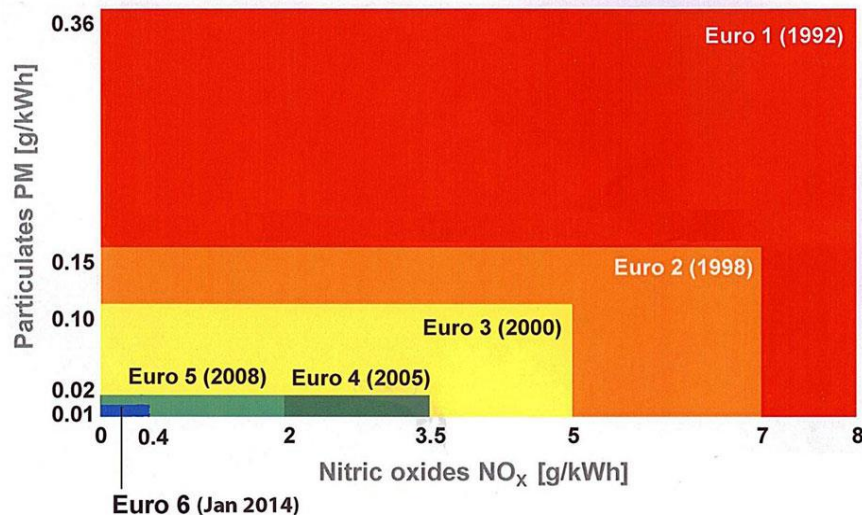
FINDINGS OF FACT – Ian Percival and IPL Haulage Ltd

28. It is accepted that an emissions cheat device was fitted to EU08VXR on 3 November 2017 and had been since September. That a device is fitted is not in itself a contravention of Regulation 61 of the Road Vehicles (Construction and Use) Regulations 1986. The offence occurs when the limit values in the relevant Community Directives are exceeded. Because of its age, the vehicle was required to meet Euro 4 requirements. Deliberately interfering with a vehicle's NOx management systems so as to make a vehicle non-compliant with the applicable emissions limits is to undermine the whole purpose of vehicle emissions legislation determined upon by the EU Council of Ministers. This is progressively over time to reduce NOx emissions from the EU's vehicle parc and therefore to reduce NOx levels in the air. A moment's reflection should have been enough for Mr Percival to realise that he was not acting legally: if what he did was permissible (ie to alter a Euro 4 engine so that it no longer met Euro 4 emissions requirements), there would be

absolutely no point in having such standards in the first place. The graph below illustrates the large reductions in NO_x achieved by the progressive Euro standards since 1992 and gives an idea of the potential consequences of interfering with an engine's ability to meet such standards (the dates are those for Type Approval, dates for entry in to service are generally 1 – 3 years later).

EU Emissions Standards

Exhaust emissions Euro 1–6



29. The vehicle had a defect within its emission control system that caused it to de-rate to “limp-home” mode. That process is intended to be a fail-safe so that emissions control defects are rectified by vehicle owners and users. It follows that it is far more likely than not that any circumvention of that fail-safe mode to allow the vehicle to continue with a defective emission control system will render the emissions in excess of the relevant applicable standard. I find that the prohibition was properly issued and Section 26(1)(c)(iii) is made out.

30. Mr Percival admitted to Vehicle Examiner Collins that the purpose of the emulator was to get the vehicle through the MoT (page 32 of my brief, page 7 of 8 of Vehicle Examiner Collins' report). This point was not challenged by the operator nor Mr Backhouse. It raises this prohibition above merely having incurred a mechanical defect in to a fraudulent act. It is just as serious as, for example, fitting a sophisticated device to manipulate tachograph records.

31. There have been a significant number of mechanical prohibitions issued to this operator's fleet over the past five years, with five alone in the 12 month period leading up to the maintenance investigation. Whilst the company had taken action to address those that arose from driver negligence, it had not reviewed its maintenance frequency. I note from the vehicle examiner's report the following prohibitions issued for which the date of previous inspection was available

ID	Date of PG9	Date of PMI	Elapsed time	Defect
C231222	10/1/18	25/11/17	7 weeks	Brakes out of adjustment
EU08VRX	3/11/17	29/9/17	5 weeks	AdBlue emulator
C231844	3/11/17	4/10/17	4 weeks	Brake drum fractured
C357274	25/4/17	25/2/17	9 weeks	Excess corrosion of brake actuator x 2

32. Half of the prohibitions occurred on trailers outside a standard six week inspection period. IPL has adopted a nine-week period. On the basis of the limited analysis that I am able to undertake from the information available to me, nine weeks is demonstrably too long. A competent transport manager exercising continuous and effective management of the transport operation should have conducted that analysis and drawn that same conclusion some time ago. That may have led to fewer dangerous, or about-to-become dangerous, vehicles and trailers being in service.

33. Routine brake-testing had not occurred. In addition, trailer inspections were conducted in the yard without access to under-cover and under-vehicle inspection facilities, directly contrary to DVSA's Guide to Maintaining Roadworthiness. Mr Percival told me that was done out of "ease". Taking the vehicles to the workshop involved "effort". Many of the non-driver related defects related to components that can only be seen from underneath. Again, a transport manager incurring prohibitions at the rate of this operator should have conducted that analysis and considered the outcome. There is no evidence that Mr Percival did that. In the positive, inspections are now conducted with proper facilities although there has been insufficient elapsed time since the maintenance investigation to establish whether these new procedures are truly embedded and will continue when the operator becomes busier.

34. The law¹ requires that:

"Every part of every braking system and of the means of operation thereof fitted to a vehicle shall be maintained in good and efficient working order and be properly adjusted."

35. The law² further requires that:

"There must be satisfactory facilities and arrangements for maintaining the vehicles under the licence in a fit and serviceable condition".

36. The evidence of effective brake testing in the records I viewed is mixed. On the record for EU61CYG dated 27 November 2017, service brake performance is recorded as 32% and the vehicle is noted as unladen. The legal minimum is 50%. The record is silent on whether or not the wheels had

¹ Regulation 18 (1) of the Road Vehicles (Construction & Use) Regulations 1986/1078

² Section 13C of the Goods Vehicles (Licensing of Operators) Act 1995

locked. So it is impossible to establish from the PMI record whether or not the brakes even met the legal minimum requirement let alone whether or not they were working as intended. The point of a brake test at a periodic maintenance inspection is to confirm that every part of the braking system is working as intended. Checking that it generates the legal minimum brake effort is entirely missing the point. In the event, I conclude that further prohibitions have been issued and Section 26(1)(c)(iii) of the Act is further made out. It is also clear that the operator has failed to comply with licence undertakings in relation to keeping vehicles fit and serviceable and driver defect reporting. Given that the issues relating to trailer maintenance appear to be because proper inspections were inconvenient, I attach significant weight to this finding.

37. Traffic commissioners are all too familiar with these sorts of maintenance shortcomings in small fleets, generally on restricted licences. This is a big fleet on a standard international licence with the benefit of a transport manager. It is entirely unacceptable that a fleet of thirty-five tractor units and sixty-six trailers has been maintained in this sub-standard way. Brake testing has been a major talking point since the DVSA Guide to Maintaining Roadworthiness was updated and made more explicit in 2014. The operator should have been aware of the requirements from the general trade press and from DVSA communications. The Upper Tribunal has confirmed in T/2012/30 MGM Haulage and Recycling Ltd that operators are deemed to know the advice that is in the public domain.

38. Given these shortcomings, it is perhaps surprising that the operator has not come to the attention of DVSA sooner. DVSA's targeting systems aggregate roadside performance with performance at annual test. This operator has an excellent first time pass rate. An independent audit conducted by Foster Tachographs notes the following:

2.19 Furthermore, it was also evident upon the PMI document for EU61 CYG dated 1st February 2018 (MOT and PMI) that a lot of work was undertaken on the vehicle presumably for the MOT event, when a relatively clear PMI report had been recorded 9 weeks earlier on the 27th November 2017.

39. It would appear from the disparity in roadside performance against that at annual test that the operator applies a different standard when preparing a vehicle for MoT. This may well account for why the operator has remained off the DVSA radar. Of course, the MoT standard is the **minimum** and the vehicle should, in fact, be maintained at a higher level at routine PMIs such that the vehicle will continue to meet or exceed MoT requirements until the time of its next inspection – in this case, some 9 weeks later.

40. Mr Percival transferred significant funds from IPL to SCS on 1 March 2018 with the express intention of ensuring that SCS could demonstrate financial standing for the purpose of the analysis to be conducted at the public inquiry. The same funds were returned to IPL on 31 March 2018. I saw no evidence of any loan or other cross-company agreement whereby these funds would be available at any other time should SCS actually need to spend them. This was

clearly a simple scam designed to thwart the established process for the calculation of financial standing. Mr Roberts said as much and Mr Backhouse did not seek to challenge.

FINDINGS OF FACT – SCS

41. Paragraph 1(1)(2) of Schedule 3 of the Act states as follows:

(2) In determining whether a company is of good repute, a traffic commissioner shall have regard to all the material evidence including, in particular—

(b) any other information in his possession as to the previous conduct of—

(i) any of the company's officers, servants or agents, or

(ii) any of its directors, in whatever capacity,

if that conduct appears to him to relate to the company's fitness to hold a licence.

42. Ian Percival is a statutory director of SCS. The Act is explicit in stating that I shall have regard to his conduct when considering the good repute of the company. The findings I have made in relation to Ian Percival as director and/or transport manager of IPL are directly relevant to the good repute of SCS.

43. Graeme Roberts told me that he held Ian Percival responsible for SCS being called to public inquiry. For that reason, he requested that Mr Percival transfer sufficient funds from IPL to SCS such that SCS was guaranteed to meet the requirement of financial standing when that was calculated for the public inquiry. Financial standing is met when the funds transferred are discounted but that does not discount the repute issues raised by the money transfer.

44. SCS did not notify that a company of which one of its statutory directors was also a director and transport manager had incurred a prohibition that resulted from an action designed to hide a material defect from a DVSA Vehicle Standards Assessor when the vehicle was presented for MoT. Section 26(1)(b) is made out.

45. Section 173 of the Companies Act 2006 requires that a director exercise independent judgement. Section 174 requires that he exercise reasonable care, skill and diligence. SCS was responsible for the maintenance of the IPL fleet. As a DVSA Authorised Testing Facility, Mr Roberts is closer than most to the enforcement agency and the standards required. It would be

reasonable to expect that, in exercising his independent judgement, care, skill and diligence, he would have identified the deficiencies in the service he was providing.

46. Had Mr Roberts also exercised his independent judgement, care, skill and diligence in relation to his operator licence obligation to ensure that financial standing was met on a continuous basis, he may not have instigated the reckless act of transferring funds from IPL to SCS in an attempt to frustrate my assessment of his financial standing.

CONSIDERATION – IPL and Ian Percival

47. In the positive, Mr Percival was frank with the DVSA examiner from the outset. Action was taken in relation to driver defect reporting. Action was taken following the vehicle examiner's visit to address the fundamental flaws in the maintenance system whereby brake performance checks were not undertaken and trailers were inspected in the yard. I am not aware of any drivers hours concerns. The annual test pass rate for motor vehicle is exemplary (I do not criticise that for trailers, I simply do not have the information).
48. In the negative, as a transport manager, Mr Percival has been slow to take action to identify the root cause of the prohibitions his fleet has received, numbering thirteen separate prohibition notices in the five year period, identifying eighteen defects of which fourteen are brake related. All bar two of the brake defects relate to trailers. These were inspected outside in the yard with no proper under-vehicle inspection facility. This was done because of the effort needed to take trailers to the maintainer's workshop, four miles away. Mr Percival has allowed financial and commercial pressures to overwhelm his judgement to the detriment of compliance.
49. Mr Percival bowed to the pressure of customers to provide a vehicle last September. Vehicle EU08VXR had been decommissioned and was for sale or sold. I am asked to believe that there were **NO** tractor units for short-term hire in or around Southampton in September 2017. That is an assertion I find difficult to accept and it is unsupported by any evidence. I do accept that new vehicles had been ordered and were delayed. But that does not excuse the clear commercial decision to put back in to service an unroadworthy vehicle.
50. Mr Backhouse submits that Mr Percival did not realise the seriousness of his actions last September. Mr Percival sought the advice of other operators but does not appear to have sought the advice of anyone relevant, such as the vehicle manufacturer, DVSA or a trade association. He told me that they (SCS) could not get access to the software to allow them to deal with any emissions/AdBlue related faults. Surely any reasonable person might ask why that was the case? Given that the software was apparently not available to a reputable independent maintenance provider, was he not on notice that "John the AdBlue man" might be doing something illegal?

51. Mr Percival himself accepts that, as an operator, he is lacking the challenge of a transport manager, or another individual, whose focus is compliance. As such, he has allowed commercial considerations to overwhelm his decision-making. That is apparent not just with the AdBlue device, but also his approach to trailer maintenance and to the transfer of funds to SCS to thwart the test of professional competence to the benefit of his second business. Further, he has allowed commercial considerations to lead him to make fraudulent acts, which both the fitting of the emulator and the transfer of funds were. For that reason, insofar as it can be separated from the good repute of IPL, I find that Ian Percival's good repute as transport manager and personally is forfeit. Section 27(1) and (2) in relation to professional competence is made out.
52. Ian Percival refers to IPL as "his business". He is **the** controlling mind of the business. There is no-one to challenge him. This is a clear case whereby I am entitled to pierce the corporate veil of the company and treat Mr Percival's conduct as that of the limited company. The Upper Tribunal has endorsed this approach in, amongst others, 2013/008 Vision Travel International Limited and T2013/61 Alan Michael Knight.
53. I refer to the guidance to which I must have regard³. Annex 3 sets out starting points for consideration of regulatory action. In terms of positive features, there are management systems and changes have been made since the vehicle examiner's visit. There was an early admission in relation to the AdBlue device. The MoT rate is exemplary and there is now, it would seem, an effective driver defect system.
54. In the negative, the fitment of the AdBlue device was a deliberate and reckless act that led to a commercial advantage and put public health at risk. The transfer of funds to SCS was a further deliberate or reckless act that was intended to provide a commercial advantage by ensuring that operator met the requirements of financial standing. There have been persistent braking defects on trailers over many years. The number of prohibition notices is high. Management systems were not reviewed and so were ineffective allowing the prohibitions to continue. There was tampering with emission control systems which is a direct parallel to tampering with tachograph systems – both are likely to kill, one just does it more suddenly and brutally than the other.
55. From these indicators, I find that the conduct was deliberate and reckless acts which gave the operator a clear commercial advantage, endangered road and public safety and was attempted to be concealed. That aligns with the category of severe. The starting point is, then, between revocation and lengthy disqualification to a significant indefinite curtailment of the working fleet.
56. I turn now to the helpful questions posed by the Upper Tribunal to assist Traffic Commissioners in determining whether a licence should continue. Mr

³ Senior Traffic Commissioner Statutory Document No. 10 "The principles of decision making and the concept of proportionality", December 2016

Percival is the controlling mind of IPL. He describes it, rightly, as “my company”. He has shown himself to prefer commercial concerns over compliance on a number of fronts. For those reasons, I find that the answer to the “Priority Freight”⁴ question of how likely is it that this operator will, in future, operate in compliance with the operator’s licensing regime, is “very unlikely”.

57. If the evidence demonstrates that future compliance is unlikely then that will, of course, tend to support an affirmative answer to the “Bryan Haulage”⁵ question: is the conduct such that the operator ought to be put out of business? I refer to my assessment at paragraphs 36 and 40 above. I also refer to the public health effects of NOx emissions which the European legislation seeks to address. Defra⁶ has made an estimate that nitrogen dioxide contributes to shortening lives by 5 months and that the overall population burden is estimated at 23,500 deaths in the UK per year. That is why emissions cheat devices have to be dealt with effectively. Users put all our lives in jeopardy. The breadth and depth of failings in this operator and the fraudulent activity of the controlling mind mean that this is a business that must come to an end. The repute of IPL is forfeit. Section 27(1)(a) of the Act is further made out.

58. The statutory guidance reminds me that disqualification is not automatic. In this case, I find that Ian Percival could be **part of** a business that operates large commercial vehicles effectively. That business would need to be structured such that there is a strong and effective challenge to his commercial bias, almost certainly requiring at least one other statutory director with equal authority. Because of that, I do not believe that disqualification is necessary nor proportionate.

CONSIDERATION - SCS

59. All my findings in relation to Ian Percival apply. I am further concerned at the ease with which Mr Roberts felt able to try to circumvent the financial standing assessment by having money transferred from IPL.

60. The positive features are that the financial matter appears to be an isolated incident. There are no other, wider, compliance failings of which I am aware.

61. The negative features are that a director, one of two statutory directors, has been involved with the fitting of an emissions cheat device. I do not repeat again here why that is a most serious matter. The second serious feature is the ease of which **both** statutory directors sought to cheat the analysis of financial standing for the public inquiry. That to do so was unnecessary makes the act of cheating all the more cynical. Mr Roberts exhibited not a care in the world that he had committed such a fraudulent act. He is reckless in the extreme. It is inevitable, having made the findings I have about both directors

⁴ Appeal 2009/225 to the Transport Tribunal

⁵ Appeal 217/2002 to the Transport Tribunal

⁶ Air Quality: A Briefing for Directors of Public Health, Local Government Association, March 2017

and there being no other controlling parties, that I find that the conduct of SCS also falls in to the serious category.

62. So can I trust this operator to comply in future? In regards to the usual matters with which I concern myself, those being drivers hours and maintenance, I believe I may be able to trust it. But the speed with which the directors took to circumvent the financial standing analysis mean that I cannot actually trust anything they say or do. So the answer is no, I cannot trust the operator to be compliant.
63. Many operators lose their licences because they cannot show financial standing. SCS sought to circumvent the financial standing analysis by transferring money between companies. Many operators spend a great deal of money repairing defective vehicles. One of SCS's directors sought to circumvent that by fitting an emulator. Operator licensing is about fair competition as well as road (and public) safety. The honest industry would expect this business to be brought to an end and that is my assessment also.
64. Mr Roberts is a businessman. I am of the opinion that the revocation of this licence will make him all the more aware of the value of an operator's licence. For that reason, I find disqualification unnecessary.

DECISION

65. On a finding of loss of good repute, Ian Percival's repute is forfeit. He is disqualified from acting as a transport manager in any member state for a period of 2 years from 30 June 2018.
66. On a finding of loss of professional competence, licence OH1041011 is revoked with effect from 30 June 2018.
67. On a finding of loss of good repute, licence OH1041011 is revoked with effect from 30 June 2018.
68. On a finding of loss of good repute, licence OH1004096 is revoked with effect from 30 June 2018.
69. The extended period until revocation acknowledges the relative size of these operations and the lack of **immediate** road safety risks and is to allow for an orderly wind-down or transition of the work to another entity.



Kevin Rooney
Traffic Commissioner
2 May 2018