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TRAFFIC COMMISSIONER FOR SCOTLAND

GOODS VEHICLES (LICENSING OF OPERATORS) ACT 1995

OVERLAND TRANSPORT LTD – OM1146052

GEORGE BROWN – TRANSPORT MANAGER

STEVEN LAMBIE – TRANSPORT MANAGER

PUBLIC INQUIRY HELD AT EDINBURGH ON 16 AND 17 APRIL 2018

DECISION OF THE TRAFFIC COMMISSIONER

Background

1. On 29 July 2016, under delegated powers, the Traffic Commissioner's Central Licensing Office granted a licence OM1146052 to company Overland Transport Ltd (hereinafter "Overland") registered office address Glen Drummond Ltd, Argyll House, Quarrywood Court, Livingston, correspondence address 37 Castle Avenue, Holytown, Motherwell ML1 4TX.

2. Overland (Scottish Companies House SC529158) was incorporated on 9 March 2016. The sole director and sole shareholder recorded at Companies House is Mr Richard Quinn (b.1988) of the 37 Castle Avenue, Holytown address. Mr Quinn has no other Companies House appointments. The nominated transport manager was Mr George Brown (b.1956) of Motherwell until 15 November 2017 and later Mr Steven Lambie (b.1988).

3. The maintenance provider notified on the application was Mr Richard Quinn – inspections at 6 weekly intervals at 156-158 Park Street, Motherwell. These premises are the business address of Mr George Brown of B & B Commercials, Argyll Works, Park Street, Motherwell.

4. An application to vary the licence was received on 15 November 2017 – to add Newhouse Nursery, High Street, Newhouse, Motherwell, ML1 5ST as an operating centre. This is an operating centre owned by Mr William Lambie of Firstline (see below). Mr Steven Lambie (b.1988) of Motherwell was nominated as a 20 hour internal transport manager on 15 November 2017.

5. Firstline International Ltd (Scottish Companies House SC360074 – still active) (hereinafter "Firstline") and director Mr William James Lambie of The Nursery Bungalow, High Street, Newhouse, Motherwell, were at Public Inquiry on 18 March 2015 which ultimately led to my revoking the Firstline licence with effect from 31 July 2015 and disqualifying Firstline and Mr William Lambie for 2 years. Mr William Lambie lost his repute as a transport manager. Driver Steven Lambie (son of William Lambie) was found not fit by reason of his conduct and had his LGV driving entitlement suspended for 5 weeks. My written decision, dated 16 June 2015, can be referred to for its terms and is held repeated herein *brevitatis causa* (lawyer's words for as if fully repeated in this document). I was very merciful to Mr Lambie given his sight difficulties.

6. That decision of 16 June 2015 gives background and shows that Steven Lambie was part of the Firstline operations as was his mother Melanie Lambie who had previously attempted to gain an operator licence (paragraph 1 of my 2015 decision refers). Firstline's premises and operating centre were at the Newhouse Nursery site. The Firstline licence had an authorisation of 6 vehicles and 6 trailers. Mrs Melanie Lambie was at the very heart of Firstline as company secretary and undertaking the administrative role given Mr William Lambie's eyesight problems. Mr Lambie had a workshop business as well as haulage.

7. Firstline and Mr Lambie appealed my decision of 16 June 2015 and thus my revocation and disqualification orders came to be stayed thereby allowing Firstline to continue operating. On 13 January 2016, following a hearing on 20 November 2015, the Upper Tribunal allowed the appeal.

8. That decision was appealed by the Secretary of State and led to the Upper Tribunal reviewing and setting aside its decision and to a re-hearing before a differently constituted panel. A re-hearing took place on 25 May 2016, with a decision dated 20 June 2016. The appeal was dismissed, Firstline's licence was revoked, and the company and Mr Lambie (as director and as transport manager) disqualified for 2 years with effect from 42 days (6 weeks) thereafter. Thus by 2 August 2016, Firstline was a disqualified operator and Mr Lambie a disqualified person.

9. My written decision in Firstline and the decisions of the Upper Tribunal were in the brief for this Inquiry and can be referred to for their terms given the relevance to this decision.

10. Companies House records show that Mr Steven Lambie was a director of Firstline from 29 February 2016 to 1 December 2017. He is also a director of Lambie Transport Services Ltd.

11. Lambie Transport Services Ltd applied for an operator licence, reference OM1146534 – no payment received so form returned; second attempt OM1146753 was lodged on 6 July 2016 to operate 6 vehicles and 6 trailers from the Newhouse nursery site, with Steven Lambie as director and transport manager. That application was withdrawn. Steven Lambie did not declare that he was a director of Firstline.

The Public Inquiry

12. Following my receiving adverse reports from DVSA, I directed that Overland and Messrs George Brown and Steven Lambie be called to Public Inquiry.

13. The Public Inquiry was held at Edinburgh on 16 and 17 April 2018. Those present were Mr Richard Quinn, director of Overland and Mr Steven Lambie, transport manager, with solicitor Mr Iain Cahill of Levy & McRae appearing. DVSA was represented by Traffic Examiner Mr J Sweetin and Vehicle Examiner Mr K Campbell. Ms Heather McLellan attended as an observer.

14. I had declined an adjournment request made by the operator's solicitors who sought additional time to instruct consultants. I was of the view that sufficient preparation time had been given. In the event, Mr Cahill was able to lodge reports from consultant auditors Mr Paul Reid and Mr Gary Hughes.

15. The usual Public Inquiry call up letters and briefs had been issued and were taken as read into the record. There was no appearance by Mr George Brown who had been called to the Inquiry as transport manager for the period from grant until 15 November 2017. I was satisfied that he had received due notice of the Inquiry and that I would have to make any decision in his absence.

16. The operator lodged an Inventory of Productions (see below).

Finance

17. The call up letter required evidence of financial standing to be demonstrated – £34,350 is required for a 7 vehicle licence in 2018. The evidence provided was as undernoted:

(a) **[REDACTED].**

(b) **[REDACTED].**

(c) **[REDACTED].**

(d) **[REDACTED].**

18. **[REDACTED].**

19. **[REDACTED].**

20. I also had available to me from my Office's records, the financial standing evidence provided at time of application for the licence and during the earlier part of its currency given a finance condition. This was copied to the operator's agent.

21. At time of application for the licence, the bank statement, dated 1 June 2016, showed these credit lodgements:

9 May 2016 Langton Amy money	[REDACTED].
12 May 2016 R Quinn Company start up	[REDACTED].
26 May 2016 B & B Commercials	[REDACTED].
27 May 2016 John Dickson Colours Bodyshop	[REDACTED].

22. At that time, £33,000 met the financial standing limit for 7 vehicles (£28,850)

23. Bank statements for the period 30 September 2016 to 30 December 2016 were considered (produced to Leeds to meet a finance condition and thus in Leeds' records. Leeds did not have any from August to September 2016). Of interest to me was how very quickly credit payments were being made to Overland. The licence was granted on 29 July. By 4 October, **[REDACTED].** The October bank statement (I did not have those for August or September) showed wage payments to **[REDACTED].** The business was up and running, drawing funds, and making payments to HMRC.

Inventory of Productions

24. The undernoted were lodged:

1. Bank statements in respect to Overland Transport Limited from 29.12.17 – 29.3.18;
2. Fleet Operator Recognition Scheme (FORS) Bronze Certificate awarded to Overland Transport Limited dated 19.12.17 – 18.12.18;
3. Edexcel Level 3 BTEC National Certificate in Vehicle Repair and Technology awarded to Richard Quinn dated September 2007;
4. Audit of Fleet Maintenance Report prepared by Gary Hughes dated 12 April 2018;
5. Audit of Compliance Report prepared by Paul Reid dated 12 April 2018;
6. Hire Purchase Agreement (Fixed) Schedule for Registration LX14 AEP;
7. Hire Purchase Agreement for Renault PO16 FEV;
8. Hire Purchase Agreement for Renault PE63 UPX;
9. Hire Purchase Agreement for Black Renault SB66 LWS;
10. Hire Purchase Agreement for Curtainsider Montracon C35 0601;
11. Hire Purchase Agreement for Tail Lift 2011 Serial no. SDDCS45S300110323
12. C.V. for Paul Reid.

DVSA Vehicle Examiner evidence

25. On 14 August 2017 a DVSA Examiner issued an 'S' marked prohibition to vehicle V888 OTL which stated "Emission controls equipment fitted by the manufacturer modified, diverter exhaust system fitted and in use". The 'S' marking came from "poor workmanship should have been apparent to the repairer".

26. Arising from this encounter DVSA undertook a maintenance investigation (MIG) of the operator and Vehicle Examiner Campbell called at 156-158 Park Street Motherwell on 16 November 2017. He found that the vehicles and trailers were being parked at Newhouse Nursery where the six weekly inspections (PMIs – preventative maintenance inspections) were undertaken. Those present at the MIG were Richard Quinn and Steven Lambie. The Vehicle Examiner found that transport manager Mr George Brown had resigned – he was given a letter dated 26 October 2017 from Mr Brown to Mr Quinn. [As Mr Brown was not at the Inquiry, I set it out in full]. It read

"I understand you have just returned from your holidays and this isn't a very convenient time.

"I have given this a considerable amount of thought and as of 1st November 2017 I will be resigning from the position of Transport Manager for Overland Transport Ltd.

"When I took this position things were a lot quieter with my own work and I had a lot more free time. Since then I have found myself becoming a lot busier and I am struggling to commit myself to your position. I was of the understanding this would only be a temporary position as you were trying to get your own CPC.

"You are more than welcome to still use the facilities at Park Street for your Operating Centre.

"I am sorry for the inconvenience and the short notice and I wish you all the best in the future".

27. Of concern to the Examiner at the visit were the following issues: vehicles not signed off as fit for service after repair; instrumented brake tests not to frequency of Guide to Maintaining Roadworthiness; PMI sheets missing; driver defect reports (DDRs) of defects not shown as rectified; operating centre not as specified on licence; the 'S' marked prohibition.

28. In respect of the prohibition, Mr Quinn said he attended show events with the vehicle and the exhaust gases were via the normal exhaust. However, with the diverter exhaust a metal flap is activated to divert the exhaust gases. No mention was made of the exhaust diverter at the PMI of 11 July.

29. The Examiner gave advice and identified the dates and periods of missing PMI sheets. These were emailed to the Examiner on 29 November 2017 and were satisfactory. Mr Quinn replied to the MIG report (PG13) on 28 November. He gave assurances and details of improvements made [p118 of the brief] with supporting documentation, including calibration of the torque wrench.

30. Maintenance and inspections are in-house, now conducted at William Lambie's workshop at Newhouse Nursery. The Examiner was satisfied by the DDR processes save that there was no recording of defects being rectified and signed fit for service. He found no recurring defects.

31. On 19 December 2016 – delayed prohibition was issued to L9 OTL for a steering defect and EBS warning light.

32. The Examiner's report contained photographs of the Park Street operating centre and of the Newhouse Nursery premises. The Vehicle Examiner had no adverse comment about the suitability of either premises.

33. On 24 August 2017, Scania had issued a certificate of compliance following replacement of the altered exhaust. This had allowed for clearance of the 14 August 2017 prohibition.

Traffic Examiner evidence

34. DVSA had two strands of investigation, which led to Traffic Examiner Sweetin making a report to my Office on Overland. Firstly, there was an over-arching interest in multiple user operating centres such as Newhouse Nursery. Secondly, there was interest in Mr Lambie after the revocation of Firstline and whether Overland was a phoenix company to continue Firstline's operations. Intelligence had been received that Overland was operating from Firstline's former operating centre at Newhouse Nurseries. Examiner Sweetin was detailed to carry out unannounced spot checks.

35. On 8 September 2016 at Gartcosh, DVSA checked L3 OTL (driver Henderson – whom Examiner Sweetin knew as a former Frontline driver) which had an incorrect registration mark. L3 OTL is a private plate and had previously been FE10 HYY specified on Firstline OM1079364. The new registration mark of L3 OTL was issued on 23 August 2016. Steven Lambie had driven the vehicle prior to and after the calibration of the VU. On 22 August 2016, driver Gordon Henderson drove SG62 EVO, a Firstline vehicle – he said he was employed by Overland and his boss was Richie. The vehicle was specified on Overland on 5 September 2016.

36. On 14 December 2016 at Todhills, and on 6 February 2017 at Beattock L7 OTL driven by James McMahon was checked by DVSA. That vehicle was previously YT12 GVO operated by Firstline. These checks were satisfactory.

37. On 20 May 2017, Examiner Sweetin and colleagues undertook an unannounced spot check at Newhouse Nursery. There were people on site who turned out to be Mr Richard

Quinn and Mr William Lambie junior. Mr William Lambie senior was there but he avoided the DVSA Examiners. The Examiners saw 5 Overland vehicles parked on the site – L10 OTL; YT12 GVO (previously L7 OTL), L8 OTL, L9 OTL and V888 OTL. L4 OTL was reportedly off road and not displaying a disc. L3 OTL was over the pit in the garage being prepared for annual test.

38. Trailers had the Overland name and Newhouse Nursery postcode ML1 5ST. Overland and the Newhouse Nursery postcode were on vehicle number plates. William Lambie junior produced keys from an office for 6 Overland vehicles. The keys for L9 OTL were with the driver at home. Mr William Lambie junior was the main driver of V888 OTL, customised to attend truck shows.

39. Mr Quinn said he was a mechanic, carried out recovery work and had been with 911 Recovery.

40. On Saturday 5 August 2017, a second unannounced DVSA spot check of Newhouse Nursery took place. The Examiners were aware the site was not the authorised operating centre for Overland. On arrival, there was no one there. Examiner Sweetin called at Mr Lambie senior's house at the premises but with no response, though given there was CCTV on site, the Examiners expected to be noticed. The Examiners found 4 vehicles operated by Overland – L8 OTL, L3 OTL, L9 OTL and V10 OTL. L4 OTL did not have a disc but was coupled to a swan neck trailer loaded with a forklift. Some trailers bore plate identifications of Overland Transport ML1 5ST. The operator name and Newhouse Nursery postcode were etched on vehicle number plates.

41. Mr Quinn arrived and asked why DVSA was there. He had received a call to say they were there ("jungle drums"). He was local and closest. The Lambie family was at Truckfest. He said Overland vehicles and trailers were on site as they were inspected and serviced there.

42. On 14 August 2017, V888 OTL driven by William R Lambie (i.e. junior) was checked at Cuerden and received a Fixed Penalty for failing to produce his driver CPC card.

43. On 17 August 2017, the Traffic Examiner went to Park Street, Motherwell to check the suitability of the premises and if Overland was parking vehicles there. After some inquiries of premises in Park Street, the Examiner identified B & B Commercials Ltd, Argyll Works, Park Street, as the relevant premises and spoke to a Mr Boyce there. He said no large goods vehicles parked there or at the next door yard and he went to inquire of his boss. This turned out to be Mr George Brown. The Examiner asked Mr Brown if he was the Overland transport manager. Mr Brown was defensive and would not confirm that he was transport manager. He did say that some HGVs did park on site but that the boy who dealt with that was off and the Examiners would need to come back. He would need to speak to Richard. Mr Brown then said he was with a customer and the Examiners would need to return the next week if they wanted information.

44. On 23 August 2017, L3 OTL driven by John Dickson, was checked at Beattock. Mr Dickson was unsure for whom he worked or who gave him instructions. He had fuelled the vehicle earlier at Peggy White's at Newhouse. The Examiner noticed that Steven James Lambie had driven the vehicle earlier that day and removed his card 6 minutes before Mr Dickson's was inserted.

45. On 12 September 2017, L3 OTL driven by Gordon Henderson was checked at Beattock. Mr Henderson said the vehicle was regularly parked at Motherwell where 3 vehicles had been moved 2 weeks before but fuel had been stolen. Some vehicles were still parked at Newhouse Nursery. He got his instructions from new boss Ritchie. The driver had abnormal load delivery sheets, with contact person Melanie Lambie.

46. Reviewing his notes, the Traffic Examiner realised that 2 trailers parked at Newhouse Nursery had same ministry plate and id number – therefore had been “cloned”.

47. The Examiner noted to meet Richard Quinn for an operator visit and sent a text message. This gave rise to a phone call from William Lambie senior to whom Richard Quinn’s phone had been diverted. Mr Lambie senior said he had nothing to do with the business. Mr Quinn phoned the Examiner later and they agreed to meet after Mr Quinn came back from a holiday. The Examiner said he needed transport manager, Mr George Brown, to be present. Mr Quinn asked if such a visit was normal practice and the Examiner explained that Overland was under investigation, with 2 spot checks having identified concerns. Through texting, a date of 10 October was fixed but Mr Quinn said he had been unable to contact Mr Brown. On 9 October, the Examiner called and texted Mr Quinn to confirm 10 October but with no reply. The Examiner was in Lanarkshire on 10 October and attended at the operating centre in Park Street to meet Mr Quinn and Mr Brown. Mr Brown was there but said he was unaware of the meeting; that Richard Quinn was on holiday; he contacted Mr Quinn. Mr Quinn called the Examiner and said he had planned the visit for 10 November not 10 October. The Examiner agreed to meet on 10 November.

48. The Examiner used the visit on 10 October to check the site with Mr Brown who indicated where vehicles parked. He spoke of fuel theft and vandalism, even given a perimeter fence and CCTV. Mr Brown explained that the correct address was 156-158 Park Street but could be 152-154. The Examiner had concerns about the suitability of the site for manoeuvring artics and semi-trailers.

49. On 7 November 2017, Mr Quinn phoned the Examiner to say that George Brown had resigned. He was looking for a new transport manager. Mr William Lambie senior could not apply and Mr Steven Lambie was not keen. They agreed to meet at Mr Quinn’s home on 10 November, which they did. Mr Steven Lambie and a second Traffic Examiner were also present. The Examiner completed a Traffic Examiner Operator Report (copy in the brief).

50. The Traffic Examiner noted that the operator joined the RHA in October 2016 and used the RHA for analysis of digital data. However, it was unclear when vehicle unit or driver card downloads occurred. George Brown was responsible for sending digital data to the RHA and printed off the analysis reports. The Examiner doubted the integrity of the process as some analysis sheets were dated and signed before the printing of the documents. It was said that Steven Lambie issued infringement sheets to drivers. No evidence of Working Time Directive could be produced. Mr Quinn could not demonstrate the downloading as his laptop was away for repair. No tachograph calibration certificates were produced. It was explained that there had been vandalism at Park Street so the vehicles parked at Newhouse Nursery. Overland now had 3 trailers.

51. The Examiner interviewed Mr Quinn. He said he was full time with Overland but did some mechanical work for others; his role in the company was to get more work; liaise with Steven Lambie and manage the work in the business. George Brown dealt with the downloading and legality of the licence, he didn’t know how many hours; there would be a contract somewhere; he didn’t know if George Brown invoiced Overland; he didn’t know how George Brown was paid or if he had invoiced; Mr Brown was responsible for drivers’ hours compliance; Steven Lambie gives the drivers their daily instructions; vehicles were initially parked in Park Street, Motherwell but there were problems with vandalism and theft so they moved them away, then back again and same happened; the vehicle keys were kept at Newhouse. The maintenance at Park Street was to be changing; only the units were going in to Park Street; they had only recently got 3 trailers. Melanie Lambie’s role is general office work, as a sub-contractor for Overland.

52. He then asked Mr Quinn about 4 vehicles L3 OTL (previously FE10 HYY); L7 OTL (previously YT12 GVO); L8 OTL (previously SG62 EUO) and V888 OTL (previously SK12 MYU) which were previously specified on Firstline’s licence and were then specified on Overland’s licence on 5 September 2016. He was asked if he had purchased these from

Firstline and, if so, had he invoices. Mr Quinn replied that every vehicle was registered to Overland and were on finance agreements. He hired trailers from Willie Lambie, as with the vehicles these were surplus to his requirements, as he did not have a licence. He said there would be BACS transfers showing payments. He said Mr William Lambie senior had no role in Overland.

53. He could not explain why 2 trailers had identical identification marks. He would need to check. He said he intended to change the maintenance from Park Street to Newhouse Nursery and to add it as an additional operating centre and Steven Lambie as transport manager.

54. The Examiner looked at a folder of RHA analysis and driver card analysis of infringements. These documents had been printed, dated with dates and as if signed by drivers and George Brown before the dates on which the sheets had been printed.

55. On 23 November 2017, Mr Quinn responded in detail to the Traffic Examiner's report, including photographs and documents. These included his explanations that the RHA downloaded driver and VU data and looked at Working Time.

56. From looking at the documents provided, the Traffic Examiner found that downloads were not done between March and 24 July 2017. RHA sheets were printed on 15 November 2017, after the Examiner's visit. There were discrepancies of data of signing analysis sheets (p182 of the brief). The Traffic Examiner concluded that the sheets were retrospectively signed and dated. It was his view that a number of sheets had been created and signed for the purposes of his systems check.

57. In his summary and conclusions (on which he was particularly cross-examined by Mr Cahill), he highlighted the connections, identified by the investigation of 20 May 2017, between the Lambie family and Overland; concerns over the role of Richard Quinn and of George Brown; his being in no doubt that Richard Quinn was involved in Overland but, his belief, that he was not in control of Overland; that George Brown was a name on the licence. He believed much had been done to conceal the identity of the persons operating and that William Lambie senior had been operating under Overland.

Mr Richard Quinn's evidence

58. Mr Quinn (b.1988) is a fleet service engineer with Hydracrat at Cleland. He has a mechanical and engineering background and has worked in garages, in the fire service, been a field service engineer doing agency work and then after the Traffic Examiner's visit he decided to get another job in case things didn't work out. Anything mechanical, HGVs, he can fix.

59. He is sole director and shareholder of Overland. He and his partner, Heather McLellan, wanted a further income and for their later life, a retirement plan. With his working with vehicles and her background in local haulage, haulage seemed a feasible option and Overland was incorporated in March 2016. The name came from it being for road haulage. He was not aware of any other companies with that name. Overland Freight Forwarding Ltd did not mean anything to him.

60. He then started looking for work, hoping to get it out of Dalzell Steelworks and that's how he came across Park Street as it was close to the steel works. He applied for the operator licence and it was granted on 29 July 2016. For financial standing, the deposit on 9 May 2015 of [REDACTED] came from Amy Langton, a close family friend from school, not a relative. She is a dental hygienist. He had asked friends for some financial backing and she gave him [REDACTED]. On 12 May 2015, he deposited [REDACTED] from his own savings. On 26 May 2016 B & B Commercials, Mr George Brown's company, paid in [REDACTED] to assist with the start up. He knew Mr Brown from when he was looking for

an operating centre. He had known him as a brief acquaintance when doing work with vans. He asked Mr Brown about the land and talked about his plans. There was nothing in writing about the [REDACTED] and no timescale for paying him back. It has not been repaid. There was nothing in writing with Amy Langton or when she would get her money back. No shares or security had been given; no interest agreed. George Brown had been looking at it as a long-term investment. As he was giving George Brown a job, George Brown was putting money in. There has not been any payment to George Brown.

61. On 27 May 2016, [REDACTED] had come from John Dickson Colours Bodyshop who is a friend of his. John Dickson had sold some assets. Mr Quinn asked him for investment and he was able to help. Nothing was in writing. Mr Dickson had started to receive some money back. There was no interest rate as such.

62. He became aware Firstline was revoked sometime after the company closed down and ceased trading as a haulier. He had known Melanie and Willie Lambie senior from 2006. They had fallen out over stolen motor parts and had not spoken for a year before 2016. He went to the same high school as Steven Lambie and both he and Steven were HGV mechanics and had friends from school.

63. Steven Lambie is an office logistics clerk who does some occasional driving. Billy Davidson and Jim McMahon drive. Melanie Lambie is employed as an administration clerk. The 3 drivers who came from Firstline were a "package deal" with the trucks. When he was looking for vehicles, he found out that Mr Lambie had a fleet and he asked if he would sell. Mr Lambie did not want to sell the vehicles but agreed to lease them to Mr Quinn until no longer needed for Mr Quinn's requirements. There were 5 or 6 vehicles involved. It was agreed he would pay the finance on the vehicles as the rent for them and drivers' jobs. Nothing was in writing. He would take the vehicles without any deposit, all he had to do was pay the leases and give Firstline drivers jobs.

64. Mr Cahill took Mr Quinn through productions 6 – 11 which were finance agreements for vehicles:-

Production 6 An agreement between Renault Trucks and Overland for LX14 AEP, signed 24/5/17 starting 30/5/17 for 24 months, with a deposit of £37,600 (against which figure I observed the annotation "Pd Melanie cash"). LX14 AEP was one of the first vehicles he purchased himself after returning one of Mr Lambie's vehicles. Overland transferred £37,600 to Renault as the deposit and then made monthly payments from 30 May 2017.

Production 7 An agreement with Shawbrook related to Renault PO61 FEV and was the second vehicle bought after returning two of Mr Lambie's vehicles. It is dated 13/11/16 and he had to pay a deposit of £5,600 and monthly payments of £615. This was a much cheaper vehicle and would soon be paid off and become an asset of the company.

Production 8 with Shawbrook related to PE63 UPX one of the three vehicles he bought after returning vehicles to Mr Lambie. His own fleet are all Renaults. Dated 13/12/16 he paid a £600 deposit and then 27 months at £1,260.

Production 9 was the Shawbrook HP agreement on a Black Renault van SB66 LWC used by Overland for fleet service, purchased with a deposit of £5,300 and 48 monthly payments thereafter.

Production 10 was the Shawbrook HP agreement dated 7/9/17 on a Montracon Curtainsider. He had been using Mr Lambie's trailers and this was his first own trailer, with deposit of £3,600 and 30 months payments.

Production 11 was the Shawbrook HP agreement on a Curtainsider, with a tail lift. £2,400 deposit and 30 months payments.

65. By the time of this Inquiry Overland operated 5 vehicles with 2 still owned by Mr Lambie senior and 3 vehicles on HP. Whether that arrangement continued depended on the outcome of the Inquiry.

66. Steven Lambie came to work for Overland after the licence was granted. Overland has 7 employees, 5 being drivers. Three drivers – David Miller, Gordon Henderson and William Lambie junior are all full time drivers.

67. Melanie Lambie works from her home address. He calls in to see her there. She keeps finance and HR documents at her home where she needs them. There is no office at the operating centre.

Mr Steven James Lambie's evidence

68. Mr Steven Lambie qualified as an HGV mechanic with Mercedes and worked with them for 7 or 8 years before moving to self-employment based at the Newhouse Nursery workshop. He had a van with diagnostic equipment. He then gained LGV Class I driver licence entitlement and went to work as a full time driver for Firstline, his father's company. When the Firstline licence became revoked he sat the transport manager CPC and applied for his own haulage company. He continued to drive, to work in the workshop and go out with a friend's van. He then started working with Richard Quinn in the office as transport planner. He had a conviction (3 points) for speeding on the M8; a HGV mobile phone conviction; and received a 5 week suspension from the Traffic Commissioner for being over his hours. He had no other convictions or cases pending. His driving licence is clear of points.

69. He gained his transport manager CPC in January 2016. He went to work with Overland in January 2017. He applied for his own operator licence but withdrew that in November 2017 as he applied to be the transport manager with Overland. If appointed as transport manager for Overland he would ensure all was compliant. He had seen the reports from Messrs Hughes and Reid.

70. He had Companies House appointments for Lambie Transport Services Ltd from 27 May 2016. He was a director of Firstline from 29 February 2016 to 1 December 2017. Thus, he was a director at the time of the Firstline revocation. He became a director and applied to be transport manager on the basis of Firstline going forward. Had there not been that first Firstline Upper Tribunal decision he would not have done that. It was between him and his father that he would take over the business. When the licence was revoked, he withdrew as he did not want it to affect his future. He had not disclosed his directorship of Firstline to the Office of the Traffic Commissioner. He had 2 attempts at applying for a licence, one possibly he did not pay the fee so it was sent back. He was not a director of Firstline when the Traffic Commissioner revoked the licence.

71. After the decision of the First Upper Tribunal he would take over Firstline. Then after the second Upper Tribunal appeal, he set up Lambie Transport Services Ltd so he could make his own application if Firstline was revoked.

72. With reference to page 50 of the brief, applying for a licence, he did so without legal advice. He did not know he had responsibilities as a director. He had no intention to conceal and did not think he had to put his name down. He did indicate that he had been at a Public Inquiry for Firstline. The answer at page 51 was in ignorance. He attended a DVSA new operator seminar with Mr Quinn.

Mr Gary Hughes' report

73. On 12 April 2018, Mr Gary Hughes met Mr Steven Lambie and Mr Richard Quinn at the latter's home address office where there were records and computers. Mr Hughes' 4 page report (which can be referred to for its full terms) identified 10 shortcomings, including that PMIs were not always completed; no wheel torque system; inspection records not showing level of repairs expected given use; insufficient evidence of defect rectification; software based DDR system infrequently used; decelerometer not being used correctly (affecting assessment of brake performance).

74. The workshop and inspection facilities and modern systems were positives. "An apparent willingness to improve and ensure compliance for both transport manager and Steven Lambie". He listed 9 bullet points of improvement actions. He discussed these with Steven Lambie and Richard Quinn and they agreed to implement these.

Mr Paul Reid's report

75. Paul Reid visited the operator on 12 April 2018 to do a compliance audit. Mr Reid's CV discloses that he holds Road Haulage and Passenger Transport CPCs and latterly has worked in public transport supervision. He found deficiencies in the operator's procedures, which he set out in his 4-page report

76. In respect of the arrangement with the RHA for tachograph reports, there was not effective analysis, reporting – most serious given no monthly report which could identify any driving without a card; out of date reporting; no cross checking with Working Time Directive; no personnel files; no resolution of infringements with drivers; and so on – his report can be referred to for its terms. He met with co-operation and apparent willingness to improve; systems and IT more in place; the operator had FORS recognition; eyesight tests at 3 months. He advised 17 bullet points of improvements, the last 3 being specific to the transport manager needing further training on the digital system and time to manage and generate reports and to be more pro-active with drivers, with one to one discussion and remedial action. He concluded that more time should be afforded to put his recommendations in place and a further audit in 6 months.

Closing Submissions

77. It was accepted that the operator had breached section 26 of the 1995 Act. There should have been immediate notification of the material change in the resignation of the transport manager George Brown. Similarly, when the company moved operating centre to Newhouse Nursery, an application should have been made before the operation was moved. The 'S' marked prohibition, as a breach of roadworthiness, was accepted. It was serious as not compliant but it was used for show purposes. Mr Quinn had given a clear direction to Mr William Lambie junior only to use the on switch at the show. The change in legislation was on the government website after the vehicle was stopped. The prohibition was cleared. The company responded without delay to the Examiners. Messrs Quinn and Lambie gave evidence that they will work with the recommendations from the Examiners and from Messrs Hughes and Reid. The latter had opined favourably. Steven Lambie had the qualifications to assist Mr Quinn.

78. There was no evidence in this case of falsification of records, drivers' hours contraventions or ineffective maintenance. He raised the *Bryan Haulage* and *Priority Freight* questions and proportionality. In the balancing act required by *Priority Freight* aggravating features were missing. Mr Quinn had no control over whether Mr Brown would appear at this Inquiry. He could not be compelled. Mr Quinn had relied on Mr Brown. In this case all the positive features outweigh the negative.

79. The question of whether Overland is a phoenix for Firstline came from the Traffic Examiner's report. No weight should be attached to the Traffic Examiner's opinion. His opinion is tenuous and derives from indirect sources.

80. The initial investment for Overland came from friends and associates of Richard Quinn as an individual. The contracts were verbal and there is nothing unlawful with that. There was nothing wrong with the application for 7 vehicles and 7 trailers and it was granted without challenge. There was a verbal agreement with Mr William Lambie senior for Overland to take over the vehicles and employees. There was nothing unlawful about that verbal agreement. This was a business opportunity for Overland. There was not enough to view Overland as a phoenix.

81. Overland has had 3 vehicles of its own and handed 3 back to Firstline, with other 2 to follow. This matches the ambition of Mr Quinn to have 7 vehicles. Overland gave the opportunity for drivers and Melanie Lambie to work. She has the required skills. That does not mean Overland was a phoenix. The number plates were not changed for concealment reasons. The price was reasonable. The use of Newhouse Nursery does not mean that Overland is a phoenix. A numbers of operators use Newhouse.

82. Mr Steven Lambie had relatively insignificant convictions and 2 weeks over the 90 hours fortnight for which he was suspended for 5 weeks. He was a director of Firstline at the point when the first Upper Tribunal decision was made. The case pre-dated his involvement as a director. There were no findings against him. He is an employee of Overland. That does not make Overland a phoenix. He was unemployed; he had known Mr Quinn since secondary school; Mr Quinn had a new business; Mr Lambie had the skill set which suited Overland at grass roots level – this does not support Overland being a phoenix. The evidence does not support fronting. He was an employee who was attractive because he brought in business.

83. The operator wished the variation applications to change the operating centre to Newhouse and for Steven Lambie to be transport manager, to be granted.

Post Inquiry information

84. An internet search of the name Amy Langton revealed an electoral roll entry disclosing Amy Langton living at a Motherwell address with a Steven Lambie, each within the age frame to be the relevant Amy Langton and Steven Lambie of this Inquiry. At no time during the Public Inquiry was this apparent cohabitation and proximity disclosed. This search information was put to parties' solicitor Mr Cahill for comment prior to my concluding my drafting in the case (letter from my Office dated 4 May 2018). The letter to Mr Cahill stated that neither Mr Quinn nor Mr Lambie offered the connection and that I would take a view on this relationship not being disclosed to me given that it was patently known to Mr Quinn and Mr Steven Lambie.

85. Ms Meek of Levy & McRae replied by email dated 11 May 2018 stating:

"We have discussed the contents with Richard Quinn and he wishes to assure the Traffic Commissioner that he did not intend to withhold the connection referred to in this letter. He answered the questions put to him truthfully. If he was asked questions on this connection, then Mr Quinn would have informed that he has been friends with Ms Amy Langton for more than ten years; that they both grew up in Holytown; and that he introduced Ms Langton and Steven Lambie. They were married at the beginning of May 2018.

"We submit that no adverse inference ought to be taken on this connection not being disclosed. An explanation of the source of the start-up capital for Overland Transport Limited ("the company") was sought by the Traffic

Commissioner at the beginning of the Public Inquiry on 16 April 2018. A copy of the bank statements provided in connection with the initial application for an Operator's Licence for the company were provided on this date for comment during the Public Inquiry.

"In the course of the Inquiry, Mr Quinn informed that Amy Langton gave him **[REDACTED]** for the purpose of start-up capital for the company. He was asked a number of questions by the Traffic Commissioner about this investment. He was asked how he knew Ms Langton. He informed that she was a close friend and that they knew each other from school. He was not asked during the Inquiry if there was any connection between Amy Langton and Steven Lambie. Similarly, Mr Lambie was not asked any questions on any connection with those that provided start-up capital.

"This connection does not alter the terms of the loan which is strictly between Richard Quinn and Amy Langton. The terms of which were spoken to during the Inquiry".

Consideration of the evidence and my decision

86. I have had regard to the undernoted case law and to the Senior Traffic Commissioner's Statutory Documents , in particular numbers 5 and 10.

Bryan Haulage (No.2) T2002/217 (putting an operator out of business question)
Priority Freight T2009/225 (can operator be trusted)
Thomas Muir (1999 SLT666) decision of the Court of Session (integrity of the regulatory regime)
Firstline International Ltd T2015/39 dated 20 June 2016
Silvertree T2012/71 (fronting and phoenixing)
Utopia Traction T2011/34 (fronting and phoenixing)
C G Cargo and Sukhwinder Singh Sandhu T2014/41 (disqualification)
Randolph Transport Ltd and Tottenham T/2014/59 (familial connections)
Heavy Haulage (Scotland) Ltd T2015/16 (familial connections and fronting)
Martin Joseph Formby T/2012/34 (trust)
Aspey Trucks Ltd 2010/49 (perception of the compliant industry)
David Randle T/2017/67 and Yvonne Bartram T/2018/003 (transport manager disqualification not disproportionate).
Duncan McKee T/2014/108 (prospects from a period of grace)
NCF Leicester Ltd T/2012/17 (requirements of financial standing)

Timeline

87. In preparing this decision, I found it helpful to set out a timeline of events and I include it here for it serves to show the emergence of Overland and the revocation decisions in Firstline. The dates are taken from documents within the Public Inquiry brief, the operator's productions, oral evidence and additional documents produced at the Inquiry.

18/3/15	Firstline Public Inquiry.
16/6/15	Firstline Public Inquiry written decision.
31/7/15	Original date of revocation and disqualification stayed by appeal to Upper Tribunal. Firstline continued to operate given the stay.
20/11/15	First Upper Tribunal hearing.
13/1/16	First Upper Tribunal appeal allowed and Firstline continued to operate.

20/1/16 Mr Steven Lambie gains his CPC.

15/2/16 Secretary of State appeals.

29/2/16 Mr Steven Lambie appointed director of Firstline.

9/3/16 Incorporation of Overland at Companies House.

9/5/16 Depositing of finance into newly opened Overland bank account by Ms Amy Langton.

12/5/16 Depositing of finance into newly opened Overland bank account by Mr Richard Quinn.

25/5/16 Second UT appeal hearing.

26/5/16 Depositing of finance into newly opened Overland bank account by B & B Commercials.

27/5/16 Depositing of finance into newly opened Overland bank account by Mr John Dickson of Colours Bodyshop.

26/5/16 Overland applies for a licence.

1/6/16 Overland application received in Leeds.

6/6/16 Lambie Transport Services Ltd lodges first application to operate (withdrawn)

6/7/16 Lambie Transport Services Ltd lodges second application.

29/7/16 Licence granted to Overland for 7 vehicles & 7 trailers under Central Licensing Office delegations (that is taken at face value by the Leeds team and not seen by me).

2/8/16 Firstline is finally revoked and Mr William Lambie and Firstline disqualified.
Overland starts operating immediately.

22/8/16 SG62 EVO encountered: driver said employed by Overland.

23/8/16 Firstline vehicles re-registered to Overland plates.

5/9/16 Firstline vehicle specified to Overland.

8/9/16 L3 OTL checked at Gartcosh.

4/10/16 Overland receiving payments for work done. Payments to HMRC and for wages (paragraph 23 above refers)

19/12/16 Delayed prohibition to L9 OTL.

20/5/17 DVSA check Newhouse. Overland vehicles there.

5/8/17 DVSA check Newhouse again. Overland vehicles there. Lambie family contact Mr Quinn.

14/8/17 'S' marked prohibition to V888 OTL driven by Mr William Lambie junior.

17/8/17 Traffic Examiner visit to Park Street.

23/8/17 L3 OTL checked at Beattock.

24/8/17 Scania issue certificate of clearance.

12/9/17 L3 OTL checked at Beattock.

4/10/17 Mr Richard Quinn's mobile is diverted to Mr William Lambie senior.

10/10/17 Traffic Examiner to Park Street for operator visit. Saw Mr George Brown.

26/10/17 Date of letter from George Brown to Richard Quinn.

7/11/17 Mr Richard Quinn advised Mr George Brown resigned.

10/11/17 Traffic Examiners visit.

15/11/17 Mr George Brown resigns as transport manager.

Variation application to add Newhouse Nursery as operating centre and Mr Steven Lambie as transport manager.

16/11/17 Vehicle Examiner calls to undertake Maintenance Investigation ("MIG").

1/12/17 Mr Steven Lambie ceases to be director of Firstline.

Findings in fact

88. I make the following findings in fact material to my decision.

1. Overland was incorporated on 9 March 2016. It began operating immediately on or about 2 August 2016 providing an operator licence for contracts hitherto operated by Firstline/Mr William Lambie.
2. Mr Richard Quinn is and has been in full time employment and has not taken any income from Overland.
3. Mr Richard Quinn takes and has taken no drawings, dividends or wages from Overland.
4. He has not met the accountants for the company.
5. He has not completed a tax return.
6. The financial administration of the company is undertaken by Mrs Melanie Lambie at her home address. Mrs Lambie undertook this equivalent work for Firstline given Mr Lambie's sight and reading restrictions.
7. There are no written contracts between Overland and any of these persons working for Overland – Melanie Lambie, William Lambie junior, Steven Lambie or drivers. Mr Quinn assumed wage slips were issued by Mrs Lambie and that the wages paid are net of PAYE and NI. He did not know.

8. Mr Richard Quinn has no documentary evidence other than bank statement entries to set out the terms on which [REDACTED] was received through Amy Langton
[REDACTED] was received through B & B Commercials
[REDACTED] was received through John Dickson Colours Bodyshop.
9. Mr Quinn and Overland did not have sufficient funds or resources of its or his own to apply for an operator licence for 7 vehicles. Possibly, he had funds for one vehicle but use of such by Overland for one vehicle would have depleted his personal finance resources.
10. Prior to the incorporation of Overland and prior to the grant of the licence Mr Quinn's involvement with hauliers and haulage had been as a service engineer mechanic. He had never been in business on his own account.
11. Mr Quinn took no legal or financial advice as to how this business could serve to provide a pension for himself and his (personal) partner.
12. Overland was able to specify vehicles immediately after grant of the licence because Mr William Lambie senior of Firstline made such vehicles available to Overland. The Firstline drivers moved to Overland. Overland had instant work through Firstline/Lambie contacts. Neither Mr Quinn nor Overland had the financial resources of his or its own to meet the necessary financial standing nor to fund the availability of vehicles.
13. The funds to establish financial standing came from the direction of the Lambie family. Amy Langton was the co-habitee, now wife, of Steven Lambie; John Dickson is a close associate of William Lambie and accompanied Mr Lambie to the Firstline Public Inquiry; Mr George Brown and B & B Commercials must be similarly associated with Mr William Lambie.
14. Overland's business came from Lambie connections. Members of the Lambie family – Steven, Melanie and William junior all receive regular payments from Overland. Mr Richard Quinn did not receive any payments from his involvement in Overland. The financial beneficiaries of the Overland operation are and have been Mr William Lambie senior and Firstline (the vehicle finance arrangements and rent), members of the Lambie family, and not Mr Richard Quinn.
15. Mr Richard Quinn signed HP and indemnity guarantees with Shawbrook in 2017. Cash was provided through Mrs Lambie in May 2017 for the deposit on LX14 AEP. This cash did not come from Overland or Mr Quinn.
16. I find as fact that the Overland Licence has been used by Mr William Lambie and the Lambie family for the direct purposes of circumventing my and the second Upper Tribunal orders for the revocation of Firstline and the disqualification of Firstline and Mr William Lambie senior.
17. I find that Newhouse Nursery has been used as an unauthorised operating centre on a regular basis throughout the currency of the licence, with lesser use of the authorised operating centre.
18. I find that Mr George Brown was not exercising the continuous and effective control required of a transport manager and that he was party to this licence being obtained and used for the purposes of continuing Firstline/Mr Lambie's transport operation.
19. I find that Mr Steven Lambie was party to these arrangements for the circumventing of the revocation and disqualification orders and the continuation of the transport operation hitherto operated under the Firstline licence.
20. I find that the operator has breached the licence undertakings.

21. I find that as at the date of the Public Inquiry the operator could not show financial standing for 7 vehicles.

89. In his submissions, Mr Cahill made much of the lawfulness of oral contracts and he is correct in that there still remain certain types of contracts which can be oral. Many contracts do require writing such as those with lending bodies such as Shawbrook and thus within the productions there were finance agreements between Overland for vehicles. Firstline and Mr William Lambie could not have entered into agreements with Shawbrook or other institutions for the purchase of any HGVs for such lenders are well aware that operator licences are required to operate in Great Britain and will require sight of these. Sometimes such financiers are duped or careless but for the most part the funding of trucks requires production of an operator licence. That is why in the scheme of what is Overland, this was one area in which there was documentation. If persons were employees then they should have received written particulars in terms of the Employment Rights Act – a mandatory requirement. Not everything can be oral.

90. The timeline is revealing. I can express my considerations through some plain language questions. Can it possibly be a wonderfully coincidental business opportunity that by sheer happenstance Mr Richard Quinn, hitherto hardworking as a service engineer with no personal or family background in business and modest savings, registers a company at Companies House never having met an accountant or adviser; ingathers funds from a friend from school, Amy, who cohabits, and later marries another friend from school, Steven, whose mother and father Melanie and Willie he also knows; from a local businessman whom he scarcely knows but whom he'd asked about a yard when he thought he'd get work moving steel; and who agreed to be his transport manager even though he had his own business commitments; from another chap John Dickson whom he didn't know that well but who was an associate of Mr William Lambie, with no one requiring anything in writing – not even an informal "IOU" on a page torn out of a notebook?

91. Can it possibly be so wonderfully coincidental that having incorporated just as Firstline was facing an almost certainly successful legal challenge from the Secretary to State and having secured funds for a 7 vehicle licence through these informal loans, the very next day after Firstline lost its licence Overland was placed to take over the vehicles, employees and contracts?

92. It stretches belief to see any of this as simply commercial good luck for Mr Richard Quinn. On the contrary I am in no doubt that the setting up of Overland, the financing, the use of names other than Lambie in the application, the changing up to personal plates, the use of Mr Quinn's name and address and of Park Street, Motherwell, were all a calculated deliberate ruse to get an operator's licence which would be under the control of the Lambie family – Mr William Lambie senior as the overarching but hidden force but with Melanie in the business and financial administrator, William junior back driving, including his trade show pride and joy vehicles, Steven as the multi-skilled driver, mechanic, transport planner, who was to have joined his father in Firstline.

93. This was not so much a "phoenix" (the bird from the ashes) as a cuckoo's nest arrangement – I am referring to the practice of the cuckoo bird using other birds' nests. Poor Richard Quinn, nice guy friend from school, hardworking, trusting, allowed himself to go along with the arrangements and who attempted to present these to me at the Inquiry as a means whereby he and his family would do better. Yet it became patently clear that he was not in control of the company, nor knowledgeable as a company director should be of the state of the finances, never having met the accountant, never having taken any drawings or considered profit, indeed not understanding what is meant by profit. My taking from the evidence was that William Lambie senior, Melanie and Steven Lambie were running the Overland operation and not as Mr Quinn's express delegates.

94. The Lambies put everything in place. Mr Quinn did have involvement and my assessment is that the scheme of things changed once Mr William Lambie became aware of DVSA Traffic Examiners taking an interest in who was operating from Newhouse and which vehicles were parked there. Once DVSA began to ask who was operating – from the encounters in 2016 to the visits to Newhouse and Park Street in 2017, that thirled the Lambie operation to Overland and Mr Quinn. The thwarted attempt by Steven Lambie to gain an operator's licence led to Overland being, not the short term arrangement which likely it would have been had Steven Lambie's

application proceeded, but a longer venture. Transport Manager George Brown patently took cold feet as the DVSA investigation developed and resigned.

95. The outward appearance that Overland was Richard Quinn's operation had to be maintained. Thus, his home address did continue to be the correspondence address for the licence, for the bank account and bank statements, for office functions – and the Traffic Examiners saw him and Steven Lambie at his house. Richard Quinn was involved. He appears to have been responsible for taking on one contract for the business, the unsuccessful work for Gaia-Wind Ltd which payment was not made. The drivers knew him and were told he was their employer. However, he was not controlling and directing the operation – he was the one being controlled, even though he may not have realised what was going on. Mr Quinn was the placeman.

96. I pause here to consider the matter of my not being told of the relationship between Amy Langton and Steven Lambie. The riposte is that I did not ask and I was told the money came because she is a friend of Mr Quinn. I regard that riposte and the failure to tell me as lacking in candour. That she is Steven's life partner, now wife, is a relevant consideration given the terms of the call up letter which indicated that I would need to be satisfied about the relationship between Overland and Firstline. Steven Lambie was a director of Firstline and a nominated transport manager for Overland. For it not to be disclosed to me that a provider of financial standing for Overland was Steven Lambie's wife/partner, reveals much about the attitude of parties in this case. It is a fundamental of operator licensing that there be trust between operators, transport managers and the Traffic Commissioner. Steven Lambie was at the Firstline Public Inquiry when I demanded disclosure of the identity of "smash heid". He should have learned that candour was essential and that a Traffic Commissioner should not have information kept from her. I also observe that whilst I gave the benefit of doubt to Steven Lambie and was merciful with a 5 week suspension, he was in and around the Firstline operation, albeit not yet a director.

97. In respect of the Vehicle Examiner's report and that of Mr Hughes, each found deficiencies in meeting the licence undertakings and the record keeping that is required to meet acceptable standards. It is a disappointment that, having had the benefit of the advice of Vehicle Examiner Campbell in December 2017, that auditor Hughes should find so many shortcomings. The positives found by auditor Hughes related to the workshop facilities and inspection frequency. That 9 improvement actions were needed showed me that Mr Quinn had not ensured that compliance was being fully met. Auditor Reid found shortcomings in respect of the RHA tachograph analysis and how the operator was using it. The operator lodged RHA print outs for the Inquiry from which I can see why auditor Reid has listed 15 shortcomings and numerous improvement actions. Both auditors opined that there was willingness to improve and that they would benefit from time to improve. However, they were meeting Messrs Quinn and Lambie for the first time and at face value. Steven Lambie can be highly personable and I found Mr Quinn to be a polite person. I remind myself that the Traffic Examiner was shown tachograph analysis records which were generated after the date of the drivers' signatures.

98. Evidence of financial standing for the level of authorisation (7 vehicles £34,350) could not be demonstrated. Even allowing for the misadventure with Gaia-Wind [REDACTED], financial standing for 7 vehicles would not have been there. This is not a case in which I could exercise my discretion with a period of grace as I could not see that financial standing would be reached (applying the McKee case) and I had not been asked to reduce the authorisation (applying the NCF Leicester case). The licence will be revoked principally on loss of repute (for the reasons aftermentioned) but is also revoked for lack of continuing financial standing.

99. I now turn to what action I should take in relation to this licence and the questions I have to pose. I will be guided by the *Bryan Haulage* and *Priority Freight* questions but very much in this case do I have the Court of Session case of *Thomas Muir* in mind. I have the benefit of the seam of case law on phoenixing and fronting such as *Utopia Traction* and *Silvertree* and in respect of connected people and family members, I have *Heavy Haulage* and the cases cited therein.

100. For completeness I have, of course, fully considered what Mr Cahill said in his submissions and that what was before me was a case not of repute but of breach of the licence undertakings,

use of an unauthorised operating centre, material change not notified – the section 26 admissions made. In such a case, I would do a balancing act and find trust for the future and no need to put Overland out of business. Try as I have done, I cannot find that this case is one such. On the contrary, I consider this to be a case where there has been a lack of candour and a manipulation of the licensing regime. I suspect that candour has not been shown by Mr Lambie senior or junior to Richard Quinn. He has been and is being used for other persons' purposes. No one is likely to tell a Traffic Commissioner the truth in a case such as this. I am in no doubt that I was not told the truth in this case. Mr Quinn did not tell me the truth and looked most uncomfortable.

101. This is a case in which I am considering repute and not simply section 26 breaches. I have not specified in detailed findings in fact all of the breaches of the licence undertakings. Mr Cahill for his clients, fully accepted that there had been such breaches and the auditors' reports revealed breaches to be continuing and much improvement needed before the licence could become compliant. Having found that Overland has been used to defeat my orders of revocation and disqualification of Firstline and Mr William Lambie senior as upheld by the second Upper Tribunal decision, I cannot take a benign view. There is nothing which can save this licence now from revocation and from my putting Overland out of business. Overland remains the vehicle through which Mr Lambie senior and his successor son Steven do their business along with Mrs Melanie Lambie. The revocation and disqualification was intended to put them furth of goods vehicle operating for two years.

102. My written decision, dated 16 June 2015, contained a warning to Mr William Lambie at paragraph 69 "Thus, exceptionally and mercifully I will limit the period of disqualification to TWO YEARS. I warn him not to thwart the purposes of my orders which is my way of saying – no fronting or phoenixes". A Traffic Commissioner has to protect her jurisdiction, to protect road safety and fair competition from persons such as Mr William Lambie senior and those whom he would direct. I cannot repose any trust in Overland or its director, Mr Richard Quinn, for he has not been in control and he has allowed himself to be used to undermine my orders as upheld by the second Upper Tribunal. It is proportionate that I revoke this licence. Not to do so would send a very wrong message to the compliant operators who respect the purposes of operator licensing. It would undermine the deterrence that needs to be there to discourage others from facilitating operations by disqualified persons. I guess that this decision may have implications for Overland given the finance agreements but I cannot protect Overland and Mr Quinn from that. I cannot hold back from revocation because these agreements have been signed. No one who undermines a Traffic Commissioner's orders can expect mercy.

103. I now turn to my powers of disqualification. In my Firstline decision, I disqualified Firstline and Mr Lambie senior for 2 years. That mercifulness was unrewarded and that in itself reflects badly on William Lambie senior. The undermining of mercy affects a decision maker's willingness to exercise mercy in future.

104. There has to be disqualification in this case and the period cannot be any shorter than that already operated under this licence. This licence has been used by Overland from August 2016 and operating continues. Thus, the minimum starting point would be at two years. That was the merciful period given to Firstline and Mr William Lambie. There cannot be mercifulness in this case given that mercifulness was disregarded and challenged. There has to be serious deterrence to those who would undermine a Traffic Commissioner's orders. There has to be more than a nod in the direction of fair competition and those who are honest operators and what they would think were I to impose a short period of disqualification. I have guidance available to me in the Senior Traffic Commissioner's Statutory Document No 10 and the case of *C G Cargo*.

105. This case is a severe case, which requires a severe regulatory marker. The period of disqualification of the operator company will be 5 years. The same period will apply to Mr Richard Quinn, sole director, even though this is his first time at Public Inquiry and that others have used him. It may be small comfort to him to know that even though Firstline and Mr William Lambie senior's disqualification orders end in August 2018, that will not mean that their repute is restored or that they could be granted an operator licence.

106. I now consider transport manager Mr George Brown who was called to this Public Inquiry for me to consider his repute. It does not help me that he did not turn up nor did he put in any written submissions and I do take a negative inference from that.

107. He was the original transport manager on the licence and a medium through which the financial standing needed to get this licence granted was passed. From what I can glean from the DVSA reports, he has his own business at the premises at Park Street and he appeared to be a busy man.

The Traffic Examiner detected a reluctance to engage with him, on one occasion that may well have been due to the priorities of his other business. As far as I can make out he was not physically obstructive but neither was he as open and engaged as is required of a transport manager when a DVSA Examiner needs answers. He knew the fleet was not being normally kept at the authorised operating centre and security concerns have been cited for that. As transport manager, he should have ensured either that other premises were nominated or that the authorised centre was used. The shortcomings detected by the Examiners and, later the auditors, reflected that proper arrangements were not in place to meet the licence undertakings. He did not appear to have been wholly absent the scene but there was no regular scheduled contact with Mr Quinn. Most likely just as he facilitated the financial standing for this licence through money going through in his name, he also facilitated the licence having professional competence by giving his name and CPC. I consider it more likely than not that Mr Brown is a long associate of Mr Lambie and placed to assist in getting Overland going.

108. I have to consider Mr George Brown's repute. I have to consider whether it would be disproportionate to remove his repute. I am applying EC 1071/2009 and whether the loss of good repute would constitute a disproportionate response in the individual case. In all the circumstances of this case I have no alternative but to find that it is proportionate to find that he is no longer of good repute and cannot be a transport manager for any licence. Trust is essential and I could not trust him with another licence. Having found that repute is lost, I have to disqualify him. By non-attendance, he has deprived me of the chance to assess whether rehabilitation measures are needed and what the period of disqualification should be. I make it indefinite in the knowledge that it will be for him to apply for the removal of the disqualification when he will have to show repute and knowledge of what is required of a transport manager.

109. I now turn to Steven Lambie who is nominated as transport manager on this licence and who was called to this Inquiry for me to consider his repute. Steven Lambie has a geniality to him. Unfortunately, he has been complicit in this circumvention of my revocation and disqualification orders, all as described earlier in this decision. He became a director of Firstline when my orders were subject to appeal. He was to be Firstline with his father. Thus, he had the familial interest in Firstline continuing and was closely involved in the arrangements setting up and transferring the operation to under the Overland name. He ensured his family's business continued to operate as Overland. Any person who undermines a Traffic Commissioner's orders of revocation and disqualification imperils their repute which is what Steven Lambie has done. I cannot trust Mr Steven Lambie with anyone's operator licence. I find it proportionate to remove his repute and disqualify him and in doing so I have in mind the same guidance and case law as with the operator, Mr Quinn and Mr Brown. In respect of what period of disqualification I should impose, I fix the period of 5 years. This is a severe case and I consider it equitable and proper that the same period should apply to Mr Steven Lambie as applies to Overland and Mr Quinn. I am not making any rehabilitation orders in relation to Mr Steven Lambie. His shortcomings flow from a lack of respect for the regulatory regime and not from inability to absorb what is necessary to be compliant.

110. Given the revocation of the licence, the variation applications are refused. The licence has no professional competence.

Summary of my decision

111. The operator licence held by Overland Transport Ltd is revoked with effect from 23:59 on 30 June 2018 in terms of sections 26 and 27 of the 1995 Act.

112. Overland Transport and director Richard Quinn are disqualified for FIVE YEARS (5 years) with effect from 23:59 on Friday 15 June 2018 from applying or holding an operator's licence in this or any other traffic area in terms of section 28(1) and 28(4) of the 1995 Act will apply, that is if the disqualified person:

- (a) is a director of, or holds a controlling interest in-
 - (i) a company which holds a licence of the kind to which the order in question applies, or
 - (ii) a company of which such a company is a subsidiary, or
- (b) operates any goods vehicles in partnership with a person who holds such a licence, that licence of that company, or, as the case may be, of that person, shall be liable to revocation, suspension or curtailment under section 26.

113. Mr George Brown has lost his reputation as a transport manager and is disqualified indefinitely in terms of Schedule 3 of the 1995 Act, with immediate effect.

114. Mr Steven Lambie has lost his reputation as a transport manager. He will be disqualified for FIVE YEARS (5 years) in terms of Schedule 3 of the 1995 Act with immediate effect.

Joan Aitken SSC
Traffic Commissioner for Scotland

12 June 2018