



REDACTED PUBLIC VERSION

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TRAFFIC COMMISSIONER FOR SCOTLAND

GOODS VEHICLES (LICENSING OF OPERATORS) ACT 1995

**HIGHFIELD HAULAGE CONTRACTORS LTD trading as Northern Equine Transport
OM1143338**

TRANSPORT MANAGER – Mr IAN SMITH

**DRIVERS: Messrs CAMERON JAMES GARDNER
WILLIAM RENNIE STEWART
GRANT PETRIE**

PUBLIC INQUIRY HELD AT EDINBURGH ON 22 OCTOBER AND 20 NOVEMBER 2018

DECISION OF THE TRAFFIC COMMISSIONER

Background

Highfield Haulage Contractors Ltd (“Highfield”) and Mr Cameron James Gardner

1. Highfield was incorporated on 13 November 2015 as SC520322. The registered office is Highfield House, South Cross Slacks, Gamrie, Banff, AB45 3HB. The directors at time of incorporation were Mr Cameron James Gardner (b.1991) and Mr Matthew Robert Foster (b.1989). Mr Foster resigned on 28 February 2017. Mrs Andria Gardner is Company Secretary and Cameron Gardner’s mother. Originally, Messrs Gardner and Foster were equal shareholders. From 1 March 2017, the sole shareholder has been Mr Gardner. Companies House records showed that in September 2018 Highfield was under threat of being struck off the Register of Companies. As well as being a director of Highfield, Mr Gardner is director of Highfield Seaview Lets Ltd (SC566519).

2. By application, dated 8 January 2016, signed by Mr Foster as director, Highfield applied for a standard national goods vehicle operator licence. At that point, the correspondence address for the applicant was in Fenwick, by Kilmarnock, Ayrshire. The applicant sought 2 vehicles and 5 trailers and nominated Mr William Moore (b.1940) as transport manager. Highfield House was given as the operating centre, with safety inspections to be undertaken by Alex Aitken & Son of Peterhead.

3. Some adverse matters were declared on the application form and explanations given. The licence was granted on 8 June 2016. Vehicles have been specified since 15 June 2016.

4. Mr Gardner holds LGV and provisional PCV driver licence entitlements. His driving licence shows a conviction for exceeding the goods vehicle speed limits on 11 March 2018 – 3 points.

Mr Ian Smith – transport manager

5. Mr Ian Smith (b.1963) of Overbrae, Turriff, was nominated as transport manager on TM1 form, dated 1 December 2016, signed by Mr Foster. He was proposed as an external transport manager for 5 hours per week. He declared full time employment with Gray & Adams Ltd of Fraserburgh. Mr Smith resigned by letter dated 2 September 2017.

Transport Manager Mr Robert Alan Logie

6. By TM1 form, dated 20 March 2018, signed by Mr Gardner, Mr Robert Alan Logie (b.1961) of Forres was nominated as an external transport manager for 4 hours per week. He declared appointments as a transport manager for 2 other licences but no other employment.

7. Driver Mr William Rennie Stewart (b.1964) sometime of Denhead Crescent, Dundee but now of Victoria Road, Aberdeen holds LGV driver licence entitlement. He has 3 convictions:

28/3/13	drink driving on 11/1/13 – disqualified for 13 months 27 days:
10/5/17	speeding – 3 points;
17/8/18	goods vehicle speeding on 16/4/18 – 3 points.

8. Driver Mr Grant Petrie (b.1971) of Oldwhat, New Deer, holds LGV driver licence entitlement. He has no convictions on his licence.

Public Inquiry and Driver Conduct Hearings

9. Following my receiving an adverse report from a DVSA Traffic Examiner, I directed that Highfield and the transport manager at relevant time, Mr Ian Smith, be called to a Public Inquiry at Edinburgh on 22 October 2018 conjoined with driver conduct hearings under Part IV of the Road Traffic Act 1988 for Messrs Gardner, Stewart and Petrie. The usual call up letters and briefs of papers were issued.

10. The Public Inquiry duly convened at Edinburgh on 22 October. Those present were Mr Cameron Gardner represented by Mr N Kelly, Solicitor, Glasgow; Mr Ian Smith former transport manager (unrepresented); and driver Mr Grant Petrie (unrepresented). Traffic Examiner Mr B Wardrop represented DVSA. Mr Robert Logie, transport manager, and Mr M Dunlop, transport consultant, were present as witnesses for the operator.

11. There was no appearance by Mr William Stewart whose papers were returned by Royal Mail. I learned that he was no longer employed by Highfield and those present did not have any new address for him. I decided I would have to proceed with the case and consider him at a later date.

12. As a preliminary matter on 22 October, Mr Kelly, solicitor for the operator, moved for an adjournment explaining that his client, Mr Gardner, had only recently received the Public Inquiry brief, even though it had been despatched to him at time of the call up letter. Mr Gardner had not appreciated the significance of the Royal Mail collection card. In the event I did grant the adjournment for these reasons: parties including myself had only just received the DVSA record of the second interview with Mr Stewart; that the diary produced to the Inquiry by Mr Smith as one of

his productions appeared to contain material relevant to his and the operator/Mr Gardner's reputation and would require study and copying; that given the nature of the case it was difficult for any agent to take on the case with so little preparation time given Mr Gardner's failure to have the brief to hand as early despatch should have secured; and lastly that the DVSA Traffic Examiner would have an opportunity to look at the productions brought by the operator to the Inquiry. The Inquiry and conjoined hearings (hereinafter referred to simply as "the Inquiry") were adjourned to 20 November 2018.

13. The Inquiry duly convened on 20 November 2018. All those present on 22 October were present again, with the addition of driver Mr Stewart.

Productions

14. DVSA Productions

- 1) as in the Public Inquiry brief pages 55 to 397
- 2) addendum of 19 October 2018 relative to 2 further roadside checks on 23 August and 11 September 2018
- 3) record of second interview with Mr William Stewart on 9 February 2018
- 4) Certificate of undownloadability re EU07NJJ

15. Operator Productions (non-financial)

The undernoted were provided for the operator:

- 1) letter dated 27/9/18 advising Office of the Traffic Commissioner of 4 fixed penalty notices for driver Christopher Low;
- 2) extract from Companies House showing striking off action notified on 24/9/18 discontinued;
- 3) red ring file binder with driver records;
- 4) blue folder for SK54 MKS/EU07 NJJ;
- 5) blue folder for SK54 RKS/EU07 NJK;
- 6) orange folder – trailer documentation;
- 7) & 8) 2 clear plastic tubs with digital print outs;
- 9) report by Mr Michael Dunlop;
- 10) forward planner tabulation.

16. Mr Ian Smith's Productions

- 1) Black notebook dated 26/11/16 to 30 August 2017
- 2) FTA Certificate CPC refresher course 10 – 11 January 2017.
- 3) Copy of Traffic Examiner Cooper initial operator visit report.

17. Driver Mr William Stewart

E-mail reference dated 17/11/18 from Mr Simon Seal of DHL

18. Driver Mr Grant Petrie

- 1) Letter to the Traffic Commissioner dated 25 October 2018.
- 2) Driver card analysis for Mr Petrie's driving with ARR Craib.

Financial standing

19. The call up letter, in usual way, required evidence of the continuing financial standing required for a standard national operator licence for 2 vehicles which then was £12,350. Such evidence was not available at the first calling of the Inquiry on 22 October. Financial standing was considered in private session on 20 November.

20. [REDACTED].

21. [REDACTED].

22. [REDACTED].

23. [REDACTED].

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24. [REDACTED].

25. [REDACTED].

26. [REDACTED].

27. [REDACTED].

The DVSA evidence

28. The Examiner at start of his report highlighted that the operator's vehicles SK54 MKS and SK54 RKS were changed to EU07 NJK and EU07 NJJ during the period of investigation. The Examiner confirmed that Mr Gardner attended the DVSA new operator seminar on 4 July 2017.

29. On 31 August, Examiners Wardrop and Jackson were on duty at Craigforth. They checked vehicle EU07 NJK. The driver, Mr William Stewart, said he was on a journey that started at Laurencekirk. He was going to Peterhead. He was employed by Highfield. He said due to his driving and duty times his boss, Cameron Gardner, had driven EU07 NJK the evening before from Fraserburgh to Laurencekirk. He, Mr Stewart, travelled in his own car to those locations.

30. The vehicle unit and driver's card were downloaded. A driver card in name of Cameron James Gardner was used when Mr Stewart was on a daily rest on 30 August. The Examiner phoned Mr Gardner who said he had driven the previous evening between Ellon and Dundee and that the driver (Mr Stewart) had travelled as a passenger in the HGV. The Examiner asked Mr Gardner for his driver card number. Mr Gardner phoned back with the number of his CPC card and then said he could not find his driver card. Mr Gardner was unable to tell the Examiner his start and finish

times of the previous evening. The Examiner put it to Mr Gardner that he had not been driving and he confirmed that Mr Stewart had been driving and had Mr Gardner's card. A girl he knew had dropped the card off to Mr Stewart.

31. After the call to Mr Gardner ended, Mr Stewart said the card was in the visor of the vehicle, kept in his mobile phone cover and Mr Stewart gave it to the Examiner. Mr Stewart was formally interviewed (p126 of the brief) and admitted the driving on Mr Gardner's card on 30 August 2017. He did it due to pressure of delivery timings and work. He had told Mr Gardner that he was running out of time and struggling to do the drop in the morning. The woman turned up when he was swapping trailers and gave him Mr Gardner's card. He had not used the card prior to 30 August 2017. He said he had only twice been a passenger in a HGV driven by Mr Gardner – 14 August going to a start in Melrose and another time when he had been recovered.

32. The Examiner identified that on 16 August in EU07 NJK Mr Gardner drove and Mr Stewart was a passenger between 20:38 and 01:16 – this was Mr Stewart taking his rest whilst Mr Gardner drove. Mr Stewart knew he could not take rest in a moving vehicle. The Examiner found insufficient daily rest and exceeding fortnightly driving offences.

33. The Examiner became aware that Mr Smith had resigned as transport manager and had 5 points of criticism of Mr Gardner (letter of 2 September 2017 refers). The Examiner interviewed Mr Smith on 30 October 2017. Included in their discussion was the matter of repair of the tachograph and that Mr Gardner had expressed that it would be his wages or cost of a new tachograph. Mr Smith then has concerns over financial standing. Mr Smith gave photographs to the Examiner to show how he left whiteboard messages for Mr Gardner including that there had been driving without a card and DON'T DO IT instructions. The Examiner was concerned that the transport manager did not know enough about drivers' other work and their rotas.

34. The Examiner interviewed Mr Gardner on 31 October 2017. He confirmed that he was operator of EU07 NJK on 31 August 2017 and that Mr William Stewart was and remained his employee. He was asked about the driving on his card on the evening of 30 August. He said he had gone to Ellon to meet Mr Stewart, the plan being that he, Mr Gardner, would drive to Aberdeen and so he swapped the cards over. Then they changed their minds but he forgot to tell Mr Stewart that he had swapped the cards. Mr Stewart drove unaware that he was using Mr Gardner's card. That night Mr Stewart phoned and said he had driven on Mr Gardner's card and Mr Gardner had apologised, it was an honest mistake.

35. At the interview, Mr Gardner gave the Examiner a different account to that given on the phone call of 31 October. Mr Gardner said that he asked a girl, in whose car he had left his wallet, to give the card to Mr Stewart the card at Killoh's yard to give to him, Mr Gardner. He had been in her car the night before and he left his wallet there. She was learning to drive and had her dad there. She gave the card to Willie Stewart to give to hm.

36. At Todhills M6 on 24 April 2017, DVSA checked SK54 MKS driven by Mr Gardner and pulling a Montracon trailer loaded with fertiliser. The trailer was out of test – expired in March 2017 as displayed on the trailer. Mr Gardner said he had purchased the trailer the day before and was unaware it was out of test and said if he had known, he would not have been pulling it. The Examiner as part of his investigation of the operator received the invoice from the seller. The purchase date was 11 March 2017 and the invoice stated the trailer had an MOT to end of March 2017.

Cameron Gardner and Grant Petrie's card

37. Driver Grant Petrie became of interest to the Traffic Examiner as he had noticed very quick card changeovers on occasions when Grant Petrie and Cameron Gardner were driving. He interviewed Mr Petrie on 30 October 2017. Mr Petrie was a part time driver working full time offshore. He had worked part time for Highfield since 2016. He said he left in June or July 2017 and was working part time for ARR Craib. He had not spoken to Mr Gardener for 2 months. Mr

Petrie produced 3 invoices for his work for Highfield in April, May and June 2017. The Examiner asked for proof of payment. There was a large deficit between invoiced amounts and actual payments to Mr Petrie. At the interview on 31 October 2017, Mr Gardner said he was aware it was going to run out of test but did not check the plate.

38. The record of the interview on 30 October 2017 was in the Inquiry brief. Reference was made to the sheets and to the invoices. He described the work he did for Highfield. He denied using any other driver's card. He said that was something "you don't do, you will be asking for trouble". He denied that his card had ever been in anyone else's possession or been given to anyone to insert on his behalf. He denied using Cameron Gardner's card. Asked if Cameron Gardner had used his card, he said not to his knowledge as his card was in his possession all the time. Particular journeys were put to Mr Petrie but he could not give detailed explanations or comment. The Examiner concluded the interview by asking for a contact person at Mr Petrie's main employment.

39. The Traffic Examiner was due to interview Cameron Gardner the next day and was surprised to find Mr Petrie in attendance. Mr Mike Dunlop was also present. Mr Petrie produced a letter, dated 31 October 2017 (page 198 in brief), in which he wrote that the previous day's interview was stressful and he wanted to change his statement. He wrote that the "true facts are that on 1, 2, 3, April 2017 and possibly one or two other dates, my driver card was not in my possession having been left in the downloader machine at Cameron Gardner's offices whilst I was offshore. Cameron contacted me by text saying "Your card is here for downloading and is it okay to use your card for some driving". Stupidly and without thinking about the road safety implications and very serious nature of this, I agreed. As far as I am aware it was only that weekend but there may have been one or two others". He concluded by apologising for wasting the Examiners' time and that he was thoroughly ashamed.

40. Mr Dunlop produced a driver card timeline showing when Mr Petrie's card had been used. The Examiner compared this with the record from Mr Petrie's employer. When the Examiner compared timesheets and invoices for Grant Petrie he found discrepancies of dates and deficiency in amounts. These led the Examiner to the view that Mr Petrie's card was used on 16 and 24 April 2017.

41. In all the Examiner believed that Mr Petrie's card was used by Cameron Gardner between 31 March and 2 April 2017 when Mr Petrie was offshore; 3 April similarly; 7 and 8 April similarly; 10 April similarly; 29 March similarly; 15 – 16 April similarly; and 24 – 25 April similarly. The Traffic Examiner's full considerations in arriving at his conclusions are set out at pp 63 – 75 of the brief and supported by productions.

William Stewart

42. Given the encounter on 31 August 2017, the Traffic Examiner also looked at driver William Stewart's records and as well as interviewing him at the roadside on 31 August, he followed up his further investigations with an interview on 9 February 2018. He also looked at Cameron Gardner's records.

43. For reasons set out in his report, the Traffic Examiner formed the view that Mr Stewart had used Mr Gardner's card on three other occasions. First of these - 5 April 2017 the timings/odometer readings/speed of change of card/ timesheets all pointed the Traffic Examiner to the view that Mr Stewart used Mr Gardner's card between 18:04:53 and 21:43.

44. Second of these - 23-24 May 2017 – EU07 NJK was driven by William Stewart from 07.24 to 21.07 when he removed his card. At 22.44 Cameron Gardner's card was inserted for 39 minutes covering 47kms and card removed at 23.31. Mr Stewart inserted his card at 06.16 but between 04.35 and 06.07 the vehicle moved with no card used (loading or unloading manoeuvres). From 06.16 Mr Stewart drives until 09.27. Mr Gardner's account of this period was that Mr Stewart went to his girlfriend's in Aberdeen. Mr Gardner drove the truck to the other side of Aberdeen and slept in it. Mr Stewart came back in his car and then Mr Gardner drove home. Mr Gardner said the two

movements were him moving the truck in the lay by. The Examiner came to the view that Mr Stewart used Mr Gardner's card to get to Buckie and therefore have good time before starting the long journey south to Larkhall and onward to Grimsby.

45. The Traffic Examiner could not get a true record of driving and duty time for both Messrs Stewart and 6-7 June 2017 (see brief pages 78-81 and associated productions). He had the download data for their respective cards, the VU data, a fuel receipt at Bullionfield, delivery notes to Lidl, and that the vehicle was in for a tachograph repair at Scania Bellshill. He had the drivers' responses at interview. On his worst analysis, the drivers had used the other's card; on best, both had failed to record their duty time and thus had insufficient breaks and rest.

46. The Examiner had all the digital data for the operator's vehicles and drivers for the period 1 April to 31 August 2017 – drivers William Stewart and Alexander Motram were full time; Grant Petrie was part time self-employed; and Cameron Gardner also drove.

47. The downloading of Mr William Stewart's card found these offences (over and above the Traffic Examiner's instances above where he considered Mr Gardner's card had been used) – full details given in his report:

8-9 June – driving without a card and insufficient daily rest – Mr Stewart admitted at interview that he removed his card as he was out of time;

9 June – driving without a card and insufficient daily rest – Mr Stewart admitted at interview that his card was not in – he forgot to put it in as was in a rush. The Examiner was of the view that the removal of the card was to disguise that he would have required 11 hours daily rest not 9;

6 April - insufficient daily rest and exceeding driving time (operator had infringement report for this signed by driver and transport manager);

7 April – insufficient daily rest and exceeding daily driving – 4th day of exceeding daily driving (operator had infringement report for this signed by driver and transport manager);

18 April – insufficient daily rest – failure to record other work;

21 April– insufficient daily rest (operator had an infringement report for this signed by driver and transport manager)

17 and 24 April – exceeding 90 hour fortnightly driving – exceeded by 4 hours 7 minutes. Given a verbal warning by a Traffic Examiner at DVSA checksite, Craigforth.

26 April – exceeding daily driving - by 13 minutes but driver had annotated printout that heavy traffic in city centre, looking for safe place to park;

29 April – exceeded 4½ hours without a break – by 12 minutes with print out heavy traffic on A1;

8 May - exceeded 4½ hours without a break – too short breaks;

9 May – exceeded 4½hours without a break – by 17 minutes with print out slow moving tractor no place to pull in;

10 May – exceeded 4½hours without a break – by 23 minutes (operator had an infringement report signed by driver and transport manager);

Insufficient weekly rest in week ending 14 May 2017;

12 May – insufficient daily rest and exceed daily driving (should have taken 11 but only took 7hours 38) and exceeded daily driving by 56 minutes (the operator had an infringement report driver stating miscalculation of hours). The Examiner had a concern with 12 May as Cameron Gardner’s card was used in the vehicle during William Stewart’s daily rest period with three periods of driving and with William Stewart’s card in the recording equipment for 2 minutes, 30 minutes after last use of Cameron Gardner’s card and 3½hours before he started his next duty. Messrs Gardner and Stewart were asked about this day in their respective interviews – the suggestions being that Mr Stewart may have stayed at Mr Gardner’s place or that Mr Gardner may have dropped the vehicle off near to Mr Stewart’s girlfriend in Aberdeen. Mr Gardner attributed his driving on the day to maybe driving to and from the garage – which the Examiner thought could have been. It was the driving for 2 minutes which drew the Examiner’s attention.

13 May – insufficient daily rest - 11 hours required, only 7 hours 59 taken (the operator produced an infringement report with driver comment of slow traffic and no safe place to park;

30 May – insufficient daily rest by 28 minutes;

2 June – insufficient daily rest – 11 hours required, only 9 hours 15 taken;

3 June – insufficient daily rest – 11 hours required, only 8 hours 35 taken (the operator produced an infringement report signed by transport manager and driver re the implications);

26 June and 3 July – exceeding fortnightly driving limit (infringement report produced signed by transport manager and driver);

4 July – insufficient daily rest – 9 hours needed, 8 hours 48 taken (infringement report produced signed by transport manager and driver);

w/c 3 July – insufficient weekly rest – 45 hours required, 41 hours 28 taken (infringement report produced signed by transport manager and driver);

13 July – insufficient weekly rest on 13 July – 11 hours required, 9 hours 43 taken (infringement report produced signed by transport manager and driver).

48. Similar findings were made for the undernoted dates when infringement reports were also signed:

28 July – insufficient daily rest; 31 July exceeding fortnightly driving limit; 4 August insufficient daily rest; 6 August exceeding daily driving by 20 minutes; 9 August insufficient daily rest ; 28 August insufficient weekly rest.

49. The Examiner also found regular incorrect use of the mode switch. The vehicle was being used for Lidl and Aldi work. The Lidl work required drivers to load and unload so the Examiner expected to see regular other work entries. The Examiner found break entries which he was sure should have been other work and he considered this failure to move to other work to be deliberate on Mr Stewart’s part. By failing to record other work and moving the mode switch to break, the driver can drive sooner and his duty time is extended and with a knock on advantage to rest of the week. In this respect the Examiner was concerned about the recording on the 3 days 30 May – 1 June when no other work is recorded whereas the driver was making deliveries on those days; similarly on 13 June; 15-18 June; 20-22 August.

50. The Examiner interviewed William Stewart on 9 February 2018. Mr Stewart said he had been an agency driver before going to Highfield and that he knew the drivers hours rules and had a folder. He told the Examiner of times when he changed with other drivers, not many occasions,

and he would be at Dundee or Aberdeen and his car would be taken back north so that his car would be at Cameron's place [the operating centre] for him to get on a Friday to get back home to his girlfriend's.

There was Lidl work and tramping work with him mostly on the Lidl work. Most of the time he would have to do the loading and unloading at Lidl unless at Lidl they were in a good mood to help. He was asked about the week commencing 31 July and failing to record other work. He said that was the week the tacho was playing up and it had to go to Scania – Cameron Gardner would know the date. The use of the mode switch was picked up by the old transport manager [Smith] He admitted that he had not been changing the mode to the crossed hammers (other work); he said it was stupidity and not paying attention.

51. He explained to the driver arrangements that would be made with Cameron Gardner for the vehicle to be parked at Altens in Aberdeen – the keys to the wagon and to his own car being left [in or about the vehicle]. Cameron would do journeys and then they would change over. He said he was with Cameron on 7 June 2017 when he did the Lidl and Aldi deliveries and went to Bellshill for the calibration. He was going to go back to Dundee but ended going back with Cameron. He had difficulty in recalling specific dates given the lapse of time.

Other matters in the Traffic Examiner's report and Addendum

52. Analysis of driver Mr Alexander Mottram's data whilst working for the operator revealed 5 infringements and instances of driving without a card.

53. In the period from June 2016 to 19 May 2018, the operator's vehicles had been subject to 15 roadside checks, only 3 of which were clear. That on 4 February 2017 revealed drivers hours offences by former director Mathew Foster. On 22 April 2017 a conditional offer was given to driver Cameron Gardner for a load security issue. On 2 June 2017 a TE prohibition notice was issued to the operator as the registration had changed to EU07 NJK but the tachograph still held the previous registration.

54. On 30 July 2017 a prohibition was issued for EU07 NJJ as the tachograph could not be downloaded and the recording equipment displayed a download fault. On 23 February 2018 driver Mottram was warned regarding exceeding 9 hours on a previous journey. On 26 April 2018 EU07 NJJ was on a journey yet the excise duty had expired. On 18 May 2018 Cameron Gardner received a TE drivers hours prohibition and conditional offer for a break offence with other offences of insufficient daily rest noted.

55. On 23 August 2018 the operator's vehicle EU07 NJJ was checked on the southbound M74. The driver was Christopher Low who said he had been working for the operator for 4 weeks, having previously been off-shore. The Examiner at the checksite gave Mr Low advice on proper use of the mode switch. On 11 September the same vehicle with same driver was checked at Todhills, M6. He was found to have exceeded the 4½ hours driving time without a break on 2 occasions; 1 of insufficient daily rest; 1 of exceeding the 90 hour fortnightly driving. He was given conditional offers totalling £800 which have been paid. [The operator notified this encounter and the 4 penalty notices to the Office of the Traffic Commissioner by letter dated 27 September 2018.]

Mr William Stewart's evidence

56. Mr William Stewart has held his LGV entitlement for over 20 years, having qualified in the Army which he left in 2013. Thereafter he mostly did agency work and non driving work such as labouring and telecentres. He started as an agency driver with Highfield and then went full time with them on payroll. He had a drink driving conviction for an offence on 11 March 2013. He had a bit of a skid on black ice, the police attended and he was breathalysed. He was over the limit from drinking the night before. A speeding offence on 16 May 2017 was committed in his car early one morning when he was late for work. He was driving at 80/81 on a dual carriageway. On 16 April

2018 he was caught speeding in a goods vehicle doing 57 downhill, fully laden. He thought the limit was 50 but it was 40.

57. He had read and understood the Traffic Examiner's report and agreed with only some of it. In respect of his use of Cameron Gardner's card, that was a total accident. He was running out of time and trying to do the deliveries. Mr Gardner said he could drive for an hour. Mr Gardner came to meet him north of Aberdeen to go south. They had a discussion. They decided to meet later and that he would get parked up with a view to an early start. However, that did not happen and he was pulled up and Cameron Gardner's card was still in. At the time, they did lie about it.

58. I asked Mr Stewart if he was now giving the Inquiry "better lies" and he said it was just worded wrong. At the time [of the encounter] he denied Cameron was driving. Eventually the truth had to come out. When they were found out, he put his hand up. He denied using it on other occasions. He only used the card once. He was new to the game and was making quite a few mistakes. The transport manager spoke to him quite a few times at the yard. Things began to improve. The majority of his drivers hours infringements were either errors or stupidity. He denied that he was deliberately stretching his days. He denied illegally breaking the law. He has since moved to other employers who have explained everything.

59. He gave details of his domestic and health circumstances. He had lost his home in Dundee and had been under a lot of stress. He worked for different employers. Highfield had sacked him for not keeping to time and losing contracts for Highfield with Lidl and Aldi. He was late for drops and sometimes he was late for work.

60. He produced an e-mail reference from Simon Seal, First Line Manager, DHL Aberdeen. This reference stated that Mr Stewart had worked for DHL since September 2018 and that Mr Stewart had been through and completed a driver assessment and other training. He has had infringements but they had seen a great improvement. He now double checks with Mr Seal. He put the infringements down to a possible lack of training with other employers.

Mr Grant Petrie's evidence

61. Mr Grant Petrie's involvement and evidence in this case came out in several stages. In advance of the Inquiry, Mr Petrie submitted a written statement dated 25 October 2018. He said he had shamelessly misled the Traffic Examiner during his interview and had apologised to the Examiner.

62. He met Cameron Gardner in August/September 2016 and they chatted about trucks. Mr Petrie wanted to get some work to bolster his off-shore earnings. Following that, Mr Petrie worked with Highfield from approximately December 2016 to July 2017. Cameron never asked him to drive illegally, all journeys were within the legal timeframe and all monies were paid to his bank account. There was an occasion when he left his digi card at the downloader. He was due to go to Africa for his work. He had left the card on previous occasions to be downloaded when he was away. Cameron sent him a text asking to use his card when he was away and he would pay him for the time the card was used. Mr Petrie agreed. He did not think of the repercussions and wished to apologise.

63. He was asked to go to the interview with the Examiner. The evening before that interview, he met Cameron Gardner and they produced invoices to correspond to the timesheets which the Examiner had requested. He falsely led the Examiner to believe that he had not seen Mr Gardner for some time. He also misled the Examiner that he was self-employed when he had not declared any of his earnings with Highfield to HMRC. He found the interview stressful and he panicked. He learned the seriousness of his actions too late but felt better for telling the truth and apologising. After the interview he contacted Mr Gardner as he wanted professional help. He went to Mr Gardner's office that night and met Mr Dunlop who told him to change his story to reflect the truth and to attend the next morning when the Examiner was due in to see Mr Gardner.

64. He concluded his written statement by saying he had worked hard to get his HGV entitlement in 1996. He had been stupid in agreeing to Cameron Gardner using his digi card. He now works part time for ARR Craib and he produced his digi card analysis for the last 3 months with them. ARR Craib were aware of the Inquiry. [The Traffic Examiner looked at these print outs from ARR Craib and was able to tell me that he had no concerns arising from these reports; there was nothing suspicious which might suggest use of another's card.]

65. Mr Petrie gave oral evidence on 20 November. He did not challenge the Traffic Examiner's evidence to the Inquiry. The Examiner was 100%. He met Mr Gardner the night before the interview with the Examiner and they made up the invoices. He knew there was concern about the end of March/April but not to what level. He agreed that he had colluded with Cameron Gardner. He was full of remorse for what he had done.

Mr Ian Smith's evidence

66. Mr Ian Smith of Turriff gained his transport manager CPC in the 1980s and undertook refresher training with the FTA in January 2017. He is employed full time with Gray & Adams. The Highfield operating centre is less than a mile from his home. He befriended Mr Foster, the joint director, who was looking for a local transport manager. They entered into a commercial contract for 5 hours per week. At the start it was Mr Foster whom he saw; rarely Mr Gardner. In role as transport manager, Highfield was his first operator. Given that both directors were drivers and that he was part time, he kept notes for himself in his notebook (produced), this practice deriving from his own time in the police and with DVSA. He could attend at the premises when the directors were away and communicate by writing on the board in the office. That seemed to work, especially with Mr Foster.

67. He found downloads confusing as he did not know which drivers were full or part time. In this area there were many offshore workers who did occasional driving. He would say if vehicles needed downloading or were overdue.

68. His own background was as a Vehicle Examiner and not with tachographs. He had relied on Tachomaster. He found the drivers' hours rules confused especially if a driver is seeking to evade them. He was not looking for someone using another driver's card let alone of the directors doing that. He rarely spoke to Mr Gardner. Mr Foster had told him of a court appearance, postponed to 15 March, for Mr Gardner. There was no outcome to that case. On 8 March (2017) he was informed, out of the blue, that Mr Foster had resigned as a director.

69. He had some concerns about continuing as transport manager with Mr Gardner and he discussed these with Mr Gardner and Mrs Gardner, Company Secretary. This was his first operator and Mr Gardner was young so he decided to stay on as it was not easy to find a transport manager in Banffshire. He suggested that Mr Gardner needed a full time transport manager. Mrs Gardner said she would take the CPC exams with a view to taking over.

70. In April, Mr Gardner purchased a trailer in Wales and brought it back without an MOT. There had not been a walk round check. He was very frustrated and reminded Mr Gardner that he needed a full time transport manager given what was happening with maintenance and infringements. Mr Gardner may have listened but he did not hear. He said he was trying. He, Mr Smith, had no control over the scheduling of drivers, who, what, when or where coming from. He relied on director, Mr Gardner for that side of the business. He understood the work to be for supermarkets, fish transportation, sub-contracting work, the furthest south being Cornwall. He did not know the circumstances of driver Mr Stewart living in Dundee but with girlfriend in Aberdeen.

71. The last straw came when he learned from a 3rd party who told him that Cameron Gardner had been stopped and someone else's card was involved. Cameron Gardner phoned some days later. He had not been told of the prohibition or stop on 2nd June.

72. His reflections on this time of working with Cameron Gardner were that he was more used to working with senior management. He needed to brush up on drivers hours. He had relied on Tachomaster and Optac but that was not the be all and end all to infringements.

Mr Cameron Gardner's evidence

73. Mr Gardner started his working life as an apprentice joiner but left, before time served, to join the Army. He became a driver and was commended on a tour of duty in Afghanistan for his manned balloon work. He served 5 years in the Army, leaving in 2012. He gained his driving entitlements in the Army. Paperwork was not his strong point. He can read but struggles to take things in. On leaving the Army, he undertook agency work and then full time work for Craib in Aberdeen for 2 years. He then moved to Oliver in Kelso, long distance work with nice lorries. He enjoyed that work. These jobs were perfect jobs and he had no worries.

74. He met a fellow driver, Matthew Foster who worked for Yuill and Dodds in Glasgow. He decided to move to Yuill and Dodds. He and Matthew Foster decided to start their own company. He wanted to make something of himself. They set up Highfield Haulage Contracting Ltd using a trading name of Northern Equine Transport as they bought an 11 horse artic trailer to renovate. That cost a lot and they did not finish it but got 2 x 8 wheel tippers. His parents' yard became the operating centre. Mathew Foster moved up. The early days of the business were good. Craig Foster, Matthew's father moved up to live in the Annex at his house and Craig Foster assisted with the office work. Mr Gardner had no day to day involvement in the running of the business. Mr Smith's relationship tended to be with Matthew Foster.

75. Things began to go wrong when he found there was no money in the bank for his wages; money was coming in from work so there was no reasons why there was not money to pay his wage. Matthew Foster and his wife were getting a wage. He then went to the bank for statements and did not like what he saw. The money was going to Matthew and his wife Emily and Matthew's father, Craig. This went on for about 4 months. His own mother and father were supporting him. He is a member of the Territorial Army and went skiing to Austria. He took the bank statements and started marking them with a pen. A Ford Ranger had been bought through the business. Also shopping at Asda and Tesco for Matthew and Emily had been put through as if the business account was their personal account. He said to Matthew Foster that one of them needed to sort this out as he, Cameron, had no money. Matthew wanted to take over the business and push him out but he wanted it and so Matthew said just take it. He kept the business going with help from his parents who were in Melrose.

76. Matthew, Craig and Emily Foster moved out and took furniture and tools which did not belong to them; the Ford Ranger and a Jaguar which had come through the haulage. Matthew said he would pay but nothing happened until one day the Ford Ranger was dumped at his parents' place. He decided to keep going with the business out of pride. He had a girlfriend and baby daughter. He was trying to prove himself. He had been to the new operator seminar with Matthew Foster but he was very green.

77. On 31 August when DVSA found Mr Stewart using his driver card, what had happened was that he got a call from Willie Stewart to say his time was tight. He phoned him back and organised a young lady who was at his house to take his wallet with the tacho card to meet Mr Stewart. That is what happened. Mr Stewart met him on the way back at Ellon. Mr Stewart was outside the cab having a puff so he jumped in and changed the cards. He put Mr Stewart's card in the ceiling and his card in the vehicle. He jumped out of the lorry and went round the truck and they decided that Willie would run his hours out. He forgot that his own card was in the machine. He had not told Willie of the change of cards – Willie Stewart was unaware.

78. He had not said this to DVSA as when the Examiner phoned him he was in his tractor and felt like a rabbit in the headlights. He waffled a load of **** on the phone. He was asked for his driver card number but was in a field. He could not find it. He basically admitted it. He could not answer any of the questions which kept coming. After that they put in systems and cards were downloaded

on a Friday or Monday either by himself or by the drivers themselves as the card download machine was always there.

79. Before Matthew Foster left they got rid of the tippers and went into general haulage. When Willie Stewart joined, they were into the second week of working for Lidl. It was a big change from local tipper work.

80. Mr Smith did write on the office whiteboard when the vehicle units needed downloaded and what else was needed to comply with the O licence. Given that he was away driving, he did not see Mr Smith but ticked the board. It was hard with Mr Smith after Matthew Foster left. Mr Smith was not keen on him and carried on reluctantly. In respect of Mr Smith's claims that he was difficult to get hold of, that was because he was away driving or loading or unloading. If he saw there was a missed call, he would get back in contact with Mr Smith. He thought it worked well. They did not see eye to eye but he had to get on with him as transport managers are not easy to come by. He tried to keep him happy and to get things done properly. Maybe it was because he was not doing what Mr Smith wanted him to do. There was tension because he was away driving most of the time.

81. He acknowledged that Mr Smith had diary entries alleging that he was driving without a driver card. He was without his card after Willie Stewart got stopped. Also weekends in the yard, moving about and shunting trailers, there would be 3, 4, 11 minutes. The driving without a card was in the yard, not going down the road. Mr Smith did explain to him that he had to record his duty time.

82. He told Mr Smith about the prohibition arising from Willie Stewart being stopped. He told him exactly what happened, that Willie had been pulled over and was driving using his card. The next day he got a letter from Mr Smith and the termination of him as transport manager.

83. Mr Kelly took Mr Gardner through the points which Mr Smith made in his resignation letter of 2 September. Mr Smith would give a token 5 minutes training on what he had done wrong. He did listen to what Mr Smith said and learned and took on board what he said. He had been driving for quite a while, knew about tachographs, and tried to put what was said to him into practice. The trailer being out of test was his own fault. He did not check the plate on the trailer even though he was told when the trailer was out of test. He just hitched it up, it was a simple mistake. He had owned the trailers a couple of weeks. As to changing the brake pads on the rear axle and not being qualified, he did not see the problem. He could change brake pads on the lorry and it would go to the maintenance contractor to check it. He did not see that as a problem. He changed the registration numbers on the trucks to make them look newer. It cost about £500 each. He agreed that he had not had the tachograph locked in. It was an accident.

84. With one vehicle, the tachograph head could not be downloaded and needed repair. He tried to get it into Scania and Volvo but could not get a date so the vehicle carried on with its journey but it was repaired within days. On the final point in Mr Smith's letter, he disagreed with that. Mr Stewart was not out of time.

85. In respect of Mr Petrie's evidence to the Inquiry, he had no issue with what Mr Petrie had said. He understood why there should not be driving with another person's card and that it affected repute and road safety. Most of the driving on Mr Petrie's card was by Mr Petrie. He admitted that he had used Mr Petrie's card "off the top of my head" on 4 or 5 times. Matthew Foster left taking a great lot of money, the O licence money and a lot from the house. He was left with nothing. Then he got offered a great lot of work. By working, he tried to recover the money taken by Matthew Foster. He was very green. He did not realise what he had done. He wished he could turn back the clock. He was working his **** off trying to recover from what Matthew Foster took. Grant Petrie was aware he was using his card. He was working for Jim Killoh in Fraserburgh doing a run down the east coast and to and from Grimsby and Newcastle. He did 4 trips over 3 days swapping the cards so that at the roadside it would look ok. He agreed it was wrong and that he put people in danger working those hours. In respect of the Invoices for DVSA, he could not recollect if he contacted Grant Petrie or other way round. They sat in his kitchen office and went through the

hours with the timesheets. He accepted that what they did fell apart when examined by the Traffic Examiner.

86. With reference to the trailer prohibition in May 2017, they had faults with their trailers and so moved the maintenance provider from All Trucks Aberdeen to Jim Urquhart Aberdeen. The trailer in March 2018 was not his but belonged to Jim Kiloh. He did not put that in writing to DVSA. EU07 NJJ had an emissions light malfunction. He put it to Oliver's but they could not find anything wrong. The PRS fail in May 2017 for a headlamp was one of the reasons they moved maintenance provider as that fail was when with All Trucks. Since then they have had a 100% pass rate.

87. Chris Low started with the company 2½ months previously. In respect of the penalties in September 2018, Mr Low told him and the transport manager had printed it out on the desk same day. The lorry Mr Low had been using was not under Mr Gardner's control. He had hired the lorry and driver out to UK Road Solutions of Coatbridge and they were working the lorry and finding the loads. He himself was out working driving. He could not do everything. He was not aware that Chris Low's hours were coming up to the 90 and that he went over. The plan with UK Road Solutions was that as they control the truck week to week and are in touch with the driver each day, they should ask about the drivers hours. He was not aware of the 90 hours until it was too late. He no longer employs Mr Low because of the tachometer issues. Mr Low had not been on the books but was self-employed and used when Mr Gardner needed him. Mr Low used his time sheets as the invoice along with receipts and expenses.

88. The arrangement with UK Road Solutions is not in force with EU07 NJJ as they were taking the biscuit. He was getting jobs at £650 and fuel charged at £650. It was their fuel card. He was not getting fuel card statements or even copies so he pulled out. He now has a new driver (DJ) and the lorries are now under his father's control as well as his. He cannot drive and sit at a computer as well so his father has kindly stepped in. The work he is now doing involves moving Xmas trees, steel, concrete panels. He had not had a good year but is pulling out of it. Mr Logie is on top of the drivers hours and pulled up Mr Low. They were going to see Mr Low but DVSA beat them to it. He was very much more on the wavelength with Mr Low. He wanted to be compliant in future. He appreciated that he had infringed the drivers hours rule on 5/6 October when he had insufficient rest and that there were other similar infringements. He was taking more care. He has started to stop at Stonehaven as there was nowhere for rest in Aberdeen.

89. He wanted a chance to run his business and make a success of it. He had a lot of sleepless nights. He understood there would be action against the licence. His parents are supporting him. He hopes that his mother, the company secretary, will do the CPC. He found the stress of it all unreal. The haulage work is his bread and butter, he makes very little on the way. He could lose the house. The same would happen if the licence were suspended.

Mr Robert Logie's evidence

90. Mr Robert Alan Logie of Forres was nominated to this licence in March 2018. He has held his transport manager CPC since 1995. He is transport manager for 2 other operators who respectively operate 1 and 2 vehicles each. He has a home office where he can download and analyse tachograph data remotely. He had found 8 hours adequate for his work for Highfield. Mr Gardner does need help with paperwork and invoicing. When he arrived in the job, he found that Mike Dunlop had put what appeared to be good systems in place including Optac 3 and spreadsheets for maintenance, tax, calibration dates. He felt that Cameron Gardner had been honest with him. He had not seen any wrongdoing or inappropriate cards being used. In respect of driver, Chris Low, he thought there had been inappropriate use of the mode switch at first but on the second downloading, he noticed more serious infringements and called Mr Gardner. Mr Low was stopped the next day and fined £800 on the spot. He is no longer with the company. He had seen Mr Dunlop's report and agreed with the trailer recommendations. He found that he needed to speak to Cameron Gardner twice to make sure that what he was saying sunk in.

91. Mr Gardner did not consult him or tell him that he had sent his vehicle and driver to be used by UK Road Solutions.

Mr Dunlop's report

92. Mr Dunlop had been asked by Mr Kelly to prepare a report on Highfield's current level of compliance. A copy of his report dated 21 October 2018 was produced for the Inquiry and can be referred to for its terms. Mr Gardner contacted him in September 2017 following Mr Smith's resignation and some issues. Mr Gardner needed a great deal of guidance and instruction. Mr Dunlop was present during the DVSA interview with Mr Gardner. Mr Gardner's partner had failed the CPC exam so Mr Dunlop put Mr Gardner in touch with Mr Logie who came in fully aware of the issues. Mr Dunlop saw Mr Gardner on 21 October. The operator has 2 artics and one trailer though most work is hauling third party trailers. He advised reducing the 12 week trailer inspection frequency. Mr Gardner did not have and had not seen the PMI reports for his trailer. Mr Dunlop found a generally acceptable level of compliance with progress made since September 2017. Mr Gardner still required "robust guidance" which Mr Logie is able to offer to help the company achieve full compliance.

Closing submissions for the operator

93. Mr Gardner was present as operator (sole director and shareholder) and as LGV driver. He went into business with a friend but this fellow director fleeced him and led to his being alone in the business. His parents were in Melrose. The "fit" with transport manager, Mr Smith, was not ideal. 94. In 2017, DVSA found breaches. Some were by former director Matthew Foster and became known to Mr Gardner when he saw the Inquiry brief.

95. There was the roadside encounter by DVSA on 31 August 2017. The evidence of Messrs Gardner and Stewart was of no intent to defeat the drivers' hours rules that evening. He invited me to prefer the evidence of Messrs Gardner and Stewart to that of Examiner Wardrop. He acknowledged that when other transgressions come to light, leeway is not given. Mr Gardner used Mr Petrie's card because he had taken on too much work. This was not a case of a person having 2 driver cards.

96. Mr Gardner was in need of a mentor. He got into difficulty when he was left as sole director. He needed assistance other than a transport manager. He changed the appearance of the vehicles by personalising the plates to make the vehicles look younger.

97. When challenged by DVSA, by his transport manager, he waffled a load of [rubbish]. 2017 was his annus horribilis. His historic waffle has compounded the issues. He sought advice from Mr Dunlop so when Mr Logie came in as transport manager he could see that there were systems, including upgrading of digital analysis. The driving without a card had significantly decreased to no more than 5 minutes. Mr Dunlop had reported that all was not perfect but there were significant improvements.

98. Maintenance of the vehicles is not an issue with negative test presentation only showing a PRS for headlamp alignment.

99. Mr Gardner gave an unvarnished account of the vehicle and driver going to UK Road Services. Mr Logie said Mr Gardner seemed to know the whereabouts of the vehicle. The driver was not completely abandoned. Mr Low is no longer with the company.

100. This was a sorry case. Was his conduct such that Mr Gardner should be put out of business – Mr Kelly submitted that it was not. Mr Gardner appreciated his situation. He asked me to be lenient and not revoke Mr Gardner's vocational entitlement.

Consideration of the evidence and my decisions

Case Law and Senior Traffic Commissioner Guidance:

101. In coming to my decision, I have had regard to the Senior Traffic Commissioner's Statutory Guidance documents, in particular, numbers 1, 6 and 10, and to the undernoted case law:

Bryan Haulage (No.2) T2002/217 (must I put this operator out of business);
Priority Freight T2009/225 (can I trust this operator in future);
Thomas Muir (1999 SLT666) decision of the Court of Session (integrity of regulatory regime);
Martin Joseph Formby T/2012/34 (trust);
Aspey Trucks T2010/49 (the compliant industry);
C G Cargo and Sukhwinder Singh Sandhu T2014/41 (disqualification);
Arnold Transport & Sons Ltd v DOENI NT/2013/82 (fair competition);
Decisions of the Sheriff Principal of South Strathclyde in the case of Martin Smith B429/10 and Bruce Kilpatrick B435/10.

Findings in Fact material to my decisions

102. I find that William Stewart knowingly used Cameron Gardner's digital card on 30 August 2017 to extend his driving time.

103. I find that Cameron Gardner arranged for William Stewart to use the said card. The use allowed William Stewart to extend his driving duty time.

104. I find that William Stewart used Cameron Gardner's digital card on 5 April 2017.

105. I find that there was a pattern within this operator's practice whereby neither William Stewart nor Cameron Gardner created false records by omitting to record their full duty time and in particular in relation to driving to and from the vehicle(s) on those occasions when the day did not begin or end at the operating centre. I find that Mr Cameron Gardner failed on a frequent basis to make a full record of his duty and other work times. I find that Mr William Stewart failed on a frequent basis to make a full record of his duty and other work times.

106. I find that Mr William Stewart has been in serial breach of the drivers hours rules and has committed the offences described in the Traffic Examiner's report with the caveat that I give the benefit of the doubt to Messrs Gardner and Stewart in respect of whether Mr Gardner's card was used by Mr Stewart on 23-24 May and 6-7 June. I find that neither of them kept a true record on those days of their other work and duty times giving rise to the legitimate and reasonable suspicion on part of the Traffic Examiner that Mr Gardner's card was used by Mr Stewart.

107. I find that on 24 April 2017 Cameron Gardner knowingly used a trailer which was out of test and that he was not truthful in his answers to the Traffic Examiner.

108. I find that Cameron Gardner used Grant Petrie's driver card and with Grant Petrie he tendered fabricated invoices as if Grant Petrie had been driving on days when Grant Petrie had not and that he made false records of his driving and gave untruthful answers to the Traffic Examiner.

109. I find that Grant Petrie allowed his driver card to be used by Cameron Gardner; that he acted with Cameron Gardner to tender false invoices to the Traffic Examiner; that he gave untruthful answers to the Traffic Examiner.

110. I find that Cameron Gardner used Grant Petrie's card on the occasions identified by the Traffic Examiner and referred to in paragraph 41 above.

111. I find that Cameron Gardner used Grant Petrie's card to defeat the restrictions in the drivers' hours rules which limit driving time and require drivers to take minimum rest periods.

112. I find that this licence has not satisfied the mandatory requirement to have continuous financial standing.

113. I find that the operator in person of Cameron Gardner ceded control of one of the specified vehicles and a driver and allowed such vehicle to be used by a third party, U K Road Solutions Ltd, which did not and does not hold an operator licence.

114. I find that Cameron Gardner as director kept information material to the compliant operation of the licence from transport manager Mr Smith and from transport manager Mr Logie.

Considerations

115. Mr Kelly was correct when he referred to this case as a sorry one. Here we have a case of 2 men, LGV drivers, who decided to form a company and operate HGVs. They parted company. Mr Gardner accuses Mr Foster and his family of having depleted the company's resources and having denied him financial management and drawings. I have no way of assessing the truth of such given that the account came from Mr Gardner's oral evidence and was not backed by any documentary evidence. In respect of other matters in this case, Mr Gardner has not been straightforward and thus I am deterred from making any findings in fact in relation to the waygoing of Mr Foster as a director and what impact his and his family's conduct had on the viability of Highfield. Mr Smith appeared to find Mr Foster easier to deal with than Mr Gardner.

116. Mr Gardner took on more work than could be done lawfully or took on work which could be done lawfully, but if done in another way could be more profitable or indeed simply profitable. He was prepared to act in defiance and in deliberate breach of the drivers' hours rules and to engage with others in such behaviour. He drew Mr Grant Petrie into lending his driver card, falsifying invoices and lying to the Traffic Examiner – behaviour which led Mr Petrie to this Inquiry and to his wrestling with his conscience – initially lying even to this Inquiry but ultimately giving a truthful account. My assessment of Mr Grant Petrie is that he would not have engaged in such conduct had he not been drawn into it by the personality and persuasive pressure from Mr Gardner.

117. Mr Gardner used Mr Grant Petrie's card on the 5 occasions admitted by him. The standard of proof is balance of probabilities in cases such as these and on that standard I am able to find that the card was used on the range of dates identified by the Traffic Examiner and became the course of conduct identified by the Traffic Examiner. The tendering of false invoices by Messrs Gardner and Petrie to the Traffic Examiner was very serious and dishonest.

118. I am not in the slightest doubt that Mr Gardner gave his card to Mr William Stewart to use on 30 August 2017 because it did not suit Mr Gardner to have the journey delayed or for he, himself to undertake the driving. That Mr Gardner was willing to use the card of another and to allow Mr Stewart to use his card on 30 August, makes me find that Mr Gardner's card was also used by Mr Stewart on 5 April 2017. All the evidence points to such. In relation to the other dates, I am not so sure as I think it is just possible that Mr Gardner did meet Mr Stewart's vehicle on 23-24 May (given Mr Stewart's desire to be with his girlfriend). 6-7 June was a complicated day given the mix of deliveries and the necessity to get the vehicle to Scania for the tachograph repair. The men were with each other at times over that period and I am not prepared to go so far as to find that there was use of the other's card.

119. What can be said about this sorry state of affairs is that there was no evidence or even hint in this case of any of the drivers having a second card in their own name.

120. The concerted attempts by Messrs Gardner and Stewart to back track from what was said on 31 August affected my view of Messrs Gardner and Stewart's reliability and truthfulness. Mr Kelly asked that I believe Messrs Gardner and Stewart over Traffic Examiner Wardrop's account as noted by him contemporaneously. I have no hesitation in accepting the Traffic Examiner's evidence. The Examiner's account makes sense and retained its consistency. The accounts of Messrs Stewart and Gardner became more fanciful the more they were exposed to the telling.

121. I pause here to make a comment about Mr Gardner and his accounts of himself. Mr Gardner is one of those people who can appear very friendly, indeed vulnerable in many ways, and who will give evidence earnestly and as if really genuinely believing what he says. The "truth" becomes something which he may believe to be the truth but is a concoction. I suspect he falls in to giving accounts and explanations which are his concoctions but which others will find hard to accept in face of hard facts or circumstances which easily point to the truth being elsewhere. Put another way – he "makes it up as he goes along" which I think that is his genuine "survival" mechanism. He is relatively young and somewhat impulsive in his thinking. He has made mistakes and is suffering.

122. I have looked for what might be the positives for this operator. There are positives. The test history is good. Up until the resignation of Mr Logie, there has been professional competence on the licence and the transport managers chosen (Mr Moore, Mr Smith and Mr Logie) have been genuine individuals engaged in the role. Following the DVSA encounter with Mr Stewart, Mr Gardner engaged the services of Mr Michael Dunlop whose uncompromising involvement led to the improvement of systems and a partial revelation of the truth surrounding Mr Gardner's involvement with Mr Petrie. Mr Gardner had attended the DVSA new operator seminar. For the most part the requirements of the licence undertakings in relation to vehicles, inspection, maintenance and defect reporting were met. Mr Gardner attended for interview and whilst he did not tell the truth at all times to the Examiner, documentation was produced and there was civility of manner throughout. The licence is a young licence with a low authorisation. Mr Gardner himself is younger in years than most operators with attendant inexperience.

123. The negatives are as described in the Traffic Examiner's report and are bad. Quite simply the demands of the contracts which Mr Gardner secured for his business could not be met within the resource he had – in terms of vehicles and availability and affordability of drivers. He was had to sweat the assets and the way in which he did it was to break the drivers hours and tachograph rules. As well as being himself a driver, he was located in Banffshire, his main driver lived in either Dundee or Aberdeen, much of the fridge work needed to go down to England from Banffshire. There was extreme pressure on the business to fulfil the contracts in the time available and with the driver resource available. This led to him giving his card to William Stewart on at least 2 occasions and possibly more and to him using Grant Petrie's card. There was a pervasive practice of not recording duty time for if duty time – notably travelling to and from the vehicle(s) had been recorded then the work would not have been either possible in the customers' timescales or profitable. He needed money as the business was in financial difficulty. He ended up estranging his vehicle and driver to a third party which did not have a licence and found that he had been exploited.

124. The case law, noted above, requires that I undertake a balancing exercise. I have to identify and weigh the positives in the case against the negatives. I have to ask myself do I have to put this operator out of business for a finding of loss of repute means revocation. In considering that question, I also have to pose another question – can I trust this operator (in this case in form of sole director, shareholder Mr Gardner) in future? I also have to have some heed to the consideration of the integrity of the operator licensing regime and great head to fair competition. In this instant case, I am propelled by the evidence into finding that repute has been lost. Any operator who lends his card to a driver and who uses another driver's card imperils road safety, fair competition and TRUST. Trust is at the heart of operator licensing. I do not believe that Mr Gardner was as candid as he could have been to have any chance of retaining his repute. Mr Smith found him difficult to work with. He was not candid with Mr Logie. He is impulsive and does not realise when he must take advice and get a clear steer. The giving of his vehicle and driver to a 3rd party without telling his transport manager imperilled the trust there has to be between operator and transport manager. Mr Logie only learned of the arrangement with UK Road Solutions at the Public

Inquiry, as did Mr Dunlop who was on hand to give Mr Gardner advice. A transport consultant such as Mr Dunlop cannot be used as a fig leaf – to make it seem as if there is commitment to compliance, when in fact compliance is only when it suits the operator, Mr Gardner.

125. It would be wrong if I were to allow this licence to survive. Mr Gardner undermined fair competition, taking work from Lidl and sub contract work from Killoh and others, which should have been contracted to compliant operators at the rates required by compliant operators. Worse, by his dishonesty and manipulation of the drivers hours rules, he imperilled road safety for he was willing to be a fatigued driver and to have a fatigued driver work for him. The drivers hours and tachograph rules are fundamental to road safety.

126. The operator could not demonstrate financial standing in the private session on finance. I am not minded to grant a period of grace for I do not have confidence in the financial state of the operation and that financial standing could be found and maintained. For the reason given below, there is no professional competence on the licence now.

127. I find that this operator is no longer of good repute; that the director is no longer of good repute; that the licence undertakings have been breached; that there has been material change since grant of the licence which has been to its detriment; that there is no longer financial standing or professional competence for the licence. The licence will be revoked in terms of sections 26 and 27 of the 1995 Act. The date of revocation will be 23.59 on 22 February 2019.

128. Having revoked the licence, I now consider my powers of disqualification under section 28. Having regard to the case law, cited above, and the Senior Traffic Commissioner's Statutory Guidance document no.10, this is a severe case meriting disqualification. I am going to limit the period of disqualification to TWO years given that this was a young licence and there is a chance that the passage of time may calm Mr Gardner and allow him to work for others in a disciplined haulage regime and thereby learn what it takes to be compliant and safe.

Mr Ian Smith

129. My assessment of Mr Ian Smith, transport manager, called to this Inquiry is that he has had long service in the transport industry. He may be more used to a hierarchical and larger organisation than the 1:1 engagement of a low authorisation operator with a transport manager. His assessment that this small operation needed a full time transport manager is not one which many would have said. Mr Logie discerned the need for administrative, business support which is different. Mr Smith's stickiness for detail was not suited to the personality of Mr Cameron Gardner. Mr Smith cannot be faulted in his efforts for Mr Gardner. He cannot be faulted for failing to divine that Mr Gardner had difficulties when it came to telling the truth and acting compliantly. As Mr Smith said, he did not expect the director of an operating company to use another driver's card. It was very clear from the Traffic Examiner's report that Mr Smith was checking the drivers' downloads and creating infringement reports which required to be addressed by the infringing driver and annotated with the driver's explanation. He had warned about driving off the card. He was not a "ghost" or in any way an absentee transport manager. It was clear from Mr Stewart's interview evidence that Mr Smith had engaged with him.

130. This case has been an unhappy learning experience for him. He has acknowledged that he would benefit from further training in tachographs, drivers hours rules and scheduling issues. Mr Smith took a fully acceptable and responsible course of action in resigning when he did and in intimating his resignation to my Office without delay. He fully co-operated with DVSA and he came to the Inquiry prepared and with the evidence of his contemporaneous notebook/diary. I make no findings against Mr Smith's repute. He does not deserve a warning at Public Inquiry.

Resignation of Mr Logie as Transport Manager

131. On 5 December, that is after the conclusion of evidence in this case, my Office received a letter dated 3 December 2018 from Mr Robert Logie in which he wrote to advise me that he had resigned from Highfield on 3 December based on the fact that the remuneration for his services is far from being up to date. He had given the company until a set date to comply with bringing up to date but the company had failed and he would not be undertaking any more duties for the company. Nothing has been heard from the company in respect of this loss of transport manager despite letters of 15 January 2019 from Leeds. I considered whether to recall the Public Inquiry or ask for further submissions but given other aspects of the case, the licence had become doomed to revocation and I saw little gain in further procedures such as inviting comment and facing a period of grace application.

Driver conduct decisions

132. In arriving at my decisions in respect of the fitness of Messrs Gardner, Petrie and Stewart to hold the LGV driver licence entitlement, I have had regard to the guidance in the Senior Traffic Commissioner's Statutory Document No 6 on Vocational Driver Conduct.

133. In respect of Mr Cameron Gardner as the holder of LGV driver licence entitlement, I find that he is not fit by reason of his conduct to hold the entitlement. He has a goods vehicle speeding conviction but the exacerbation of his conduct lies in his very serious breaches of the drivers' hours and tachograph rules. He used another driver's card – that of Mr Petrie – all as described above and he let another driver use his card. In addition, he neglected to record his duty time thereby stretching his days and undermining the requirement to have sufficient rest periods. Case Example 21 gives guidance for a situation where a driver is found using the card of another and in the described case leads to a disqualification of 12 months. I do not consider that sufficient to meet the seriousness of Mr Cameron Gardner's behaviour given the extent to which he used Mr Petrie's card and allowed his own card to be used. He was untruthful to the Examiner and attempted to hide his conduct through the production of dishonest invoices. Added to that, he was not keeping a true record of his driving hours and by extending his time further imperilled road safety. Cameron Gardner was prepared to put the rest of us at risk by his behaviours and I consider that a minimum period of 2 years is required as a marker of his conduct. I cannot be merciful to him given the real risk he poses to road safety as an immature person. I revoke his entitlement with effect from 23.59 on 22 February 2019.

134. In respect of Mr Grant Petrie, I find that he is not fit by reason of his conduct to hold the LGV entitlement. A driver's digital card is personal to the driver and he crossed the line when he allowed his card to be used by another and he made it worse by his deceit of the Traffic Examiner and the creation of false invoices. He knowingly let Mr Gardner use his card, though he did not know the extent until the Examiner called. He made faltering attempts to tell the truth but it took the prospect of the second appearance before me, before he admitted what had happened. I will give him some credit for his remorse. There is not a case within the Statutory Document which aligns with Mr Petrie's conduct so I fall back on my own judgment. The Examiner did not find any offending in relation to Mr Petrie's own driving. Thus whilst I will revoke his entitlement, I will limit the disqualification to 8 months with effect from 23.59 on 22 February 2019.

135. In respect of Mr William Stewart, I find that he is not fit by reason of his conduct to hold the LGV entitlement. He used Mr Gardner's digital card on two occasions. His adherence to the drivers' hours and tachograph rules has been atrocious – as set out in paragraphs 45 – 49 above. He was not helped by being in the employment of this operator but he was told time and again by the transport manager of his failings. As a professional driver holding the entitlement, he knew the drivers' hours rules, but he did not adhere to the discipline required of those rules. He stretched his days; purported to be on breaks and rest when he was on other work; he did not record his duty time. By acting thus, he imperilled others and he put himself at risk of falling asleep or being slow in his reactions. I have had regard to the Statutory Document. Using another's card is serious.

There were occasions noted on the infringement reports when he appears to have had a genuine reason for not being able to stop when he should have done and when the additional time over has been slight. There were other occasions when it appeared that these excuses were self serving. The serial nature of his non-compliance takes him out of the situations considered in Case Examples 22 and 23 and point me to a 12 month disqualification given the volume of offences. Having regard to 12 months being the period usually imposed for use of another's card, I consider that in the round, a period of 16 months would reflect the extent to which Mr Stewart's conduct fell so far below that expected of a professional driver. I revoke his entitlement and disqualify him for 16 months with effect from 23:59 on 22 February 2019.

136. A driver such as Mr Stewart must understand that these rules are there to protect and prevent. I have to ensure that professional drivers take the rules seriously and do not take risks.

Summary of my decisions

137. The goods vehicle operator licence held by Highfield Haulage Contractors Ltd is revoked with effect from 23:59 on 22 February 2019 in terms of sections 26 (breaches of the licence undertakings, prohibitions and material change) and 27 (repute, financial standing, loss of professional competence) of the 1995 Act.

138. Highfield Haulage Contractors Ltd and Mr Cameron James Gardner are disqualified for 2 years with effect from 23:59 on 22 February 2019 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.

139. Mr Ian Smith, Transport Manager – no action.

140. The large goods vehicle driver licence entitlement held by Mr Cameron James Gardner is revoked and he is disqualified for 2 years with effect from 23:59 on 22 February 2019.

141. The large goods vehicle driver licence entitlement held by Mr Grant Petrie is revoked and he is disqualified for 8 months with effect from 23:59 on 22 February 2019.

142. The large goods vehicle driver licence entitlement held by William Rennie Stewart is revoked and he is disqualified for 16 months with effect from 23:59 on 22 February 2019.

Joan N Aitken
Traffic Commissioner for Scotland
Edinburgh

13 February 2019