



TRAFFIC COMMISSIONER FOR SCOTLAND

GOODS VEHICLES (LICENSING OF OPERATORS) ACT 1995

JOHN STUART STRACHAN T/A STRACHAN HAULAGE – OM0029162

MR JOHN STRACHAN AS TRANSPORT MANAGER

PUBLIC INQUIRY HELD AT EDINBURGH ON 21 AUGUST 2018

DECISION OF THE TRAFFIC COMMISSIONER

Background

1. Mr John Stuart Strachan (b.1959), known as Stuart Strachan, and trading as Strachan Haulage (b.1959) of 160 Hope Park Gardens, Bathgate, EH48 2QX has held a standard goods vehicle operator licence since February 1996. The current authorisation is for 8 vehicles and 8 trailers. Mr Strachan has been his own transport manager since July 2010. The operating centres on the licence are listed as Pollock Scotrans, 10 Blackburn Road, Bathgate; c/o Oliphant, Lower Bathville, Armadale, EH48 2JS; and Mitsubishi, Nettlehill Road, Livingston EH54 5EQ. The vehicle inspection frequency is for 6 weekly checks by nominated external contractors.

Variation applications

2. The operator applied to increase the licence authorisation from 8 vehicles to 13 and from 8 trailers to 12; to add operating centres at 21 Coddington Crescent, Motherwell and Coralinn House, Livingston; and to remove the Oliphant, Lower Bathville site. Decisions on these variation applications were held in abeyance pending completion of DVSA investigations – referred to below.

Public Inquiry

3. Following my receiving an adverse report from a DVSA Examiner, I directed that Mr Strachan in his capacities of operator and transport manager be called to a Public Inquiry, at which I would also consider the outstanding variation applications. The Public Inquiry was held at Edinburgh on 21 August 2018. Those present were Mr John Strachan represented by Ms L Hadzik, Solicitor, Clitheroe. Mr Alan Reid, an employee, accompanied Mr Strachan. Mr B Wardrop, Traffic Examiner, with Senior Traffic Examiner Mr A Davidson, attended to represent DVSA. The usual Public Inquiry call up letters and brief had been issued and were taken as read.

Productions

4. The operator provided the undernoted productions, all of which I have considered in coming to my decision:

- (a) Bank statements 1/5/18 to 8/8/18;

- (b) full time driver declarations signed by 14 drivers over dates in August 2018;
- (c) unsigned statement, dated 10 August 2018, by M. Gray;
- (d) notice to staff, dated 14 August 2018, from Mr Strachan advising that Mr Alan Reid is Company Compliance Officer;
- (e) CILT notification, dated 27 July 2018, to Mr Alan Reid of CPC examination date of 7 August 2018;
- (f) written warning dated 13 and signed 16 April 2018 to Mr Eugeniusz Maczynski re. driving without a card for 2kms;
- (g) operator DVSA OCRS Risk Score and associated DVSA summaries;
- (h) Driver infringement reports (12) date range 9/2/18 to 12/7/18;
- (i) Blank weekly vehicle sheet for drivers' names and job location;
- (j) DVSA OCRS score and DVSA encounter summaries.

Financial standing

5. An authorisation of 8 vehicles required £38,750 and for the requested increase to 13 vehicles required £60,750 at 2018 levels. Through submission of bank statements, the operator was able to demonstrate very comfortable availability of continuing financial standing.

Compliance History

6. The operator was subject to DVSA (VOSA) vehicle roadworthiness and maintenance investigations in 2004 and 2005 leading to Office of the Traffic Commissioner warning letters. A further 'S' marked prohibition in 2007 led to a call to a Public Inquiry heard by Deputy Traffic Commissioner McFarlane on 14 February 2008. The Deputy Traffic Commissioner gave a formal warning on maintenance and recorded the undertaking that Mr Strachan shall sit the CPC examination in 2008 and be responsible for safety inspections and maintenance of all vehicles and trailers via one maintenance provider. One of the productions lodged on Mr Strachan's behalf at that Inquiry was a certificate, dated 9 February 2008, of attendance by Mr Strachan at a day course on digital tachographs. In February 2008 Mr Strachan removed himself as transport manager and put Mr Craig Kerr in place. Mr Strachan passed the national CPC examination with his certificate issued in January 2010.

7. In June 2010, a further warning letter had to be issued to the operator for an 'S' marked prohibition and adverse maintenance investigation. A further prohibition in June 2012 led to a further adverse DVSA maintenance investigation. Mr Alan Reid, as maintenance contractor at the time knew of the defect and had ordered parts which were awaited. On 9 May 2013, the operator was issued with a final warning from my Office and that further adverse matters might be considered at a Public Inquiry.

DVSA Performance reports

8. DVSA Performance reports, copied in the Inquiry brief, showed for the 5 years to 6 July 2018 that 5 roadworthiness prohibitions had been issued, including an 'S' marked on 3 October 2015. Two Traffic Examiner prohibitions were issued on 3 October 2015 for insufficient weekly rest. The annual test history for 5 years was 23 passes, 3 PRS fails, 3 fails; and for 2 years was 9 passes, 1 PRS fail. These reports are not comprehensive and only capture the vehicles which were specified at the point of test.

DVSA evidence

9. This is the highly summarised DVSA evidence. The full evidence is within the Appendix 1 to the Public Inquiry brief being the report from Traffic Examiner Wardrop and supporting productions – 257 pages – supplemented by Examiner Wardrop's oral evidence at the Inquiry.

10. DVSA received allegations that the operator was operating in excess of authorisation; that drivers were working excessive hours; that drivers were pulling their cards; that drivers were in possession of 2 cards.
11. The DVSA investigation was in 2 stages. Initially, it was allocated to Examiner Laidlaw and he worked on it from November 2015 until leaving DVSA in 2017. Thereafter, the case was allocated to Examiner Wardrop in December 2017.
12. Mr Wardrop's first visit to the operator was on 21 December 2017. His initial purpose was to undertake the standard Traffic Examiner Operator systems check and complete a Traffic Examiner Operator Report (copied in brief) and to assess whether the operator had improved following from predecessor Traffic Examiner Laidlaw's visit.
13. He found that the company card was not being downloaded regularly (gaps of over 90 days) and some vehicles had not been downloaded. The operator engaged a consultant in August 2017 and regular downloading happened from then. Prior to December 2015 Mr Strachan had no system for downloading; in December 2015 he began downloading some vehicles but 2 were not downloaded at all, and there were missing periods for 11 vehicles.
14. Examiner Laidlaw had requested data for the period March to May 2017 and infringement reports from then. There was no information about what caused the infringements.
15. In respect of Working Time Directive compliance, Mr Strachan produced a drivers' weekly record sheet which he said he implemented in 2016. He was not a confident user of Tachomaster and now relied on his consultant. He was asked for a report for the then current 17 week period. This was not submitted. Examiner Wardrop gave advice on secondary employment by casual or agency workers and the introduction of a pro forma memo.
16. Mr Strachan was also advised that he must specify and remove vehicles within 28 days. The Examiner found that Mr Strachan had been operating more than 8 vehicles. He was also operating from Royston Road, Livingston, yet no direction or interim direction had been given authorising such.
17. In August 2016, Traffic Examiner Laidlaw conducted a systems check and completed a Traffic Examiner Operator Report (copied in brief). Comparing the reports (and allowing for intervening marking differences) Examiner Wardrop noted that between August 2016 and December 2017 there had been improvements, including that driver licences are checked 6 monthly. However, there were also negatives. Examiner Wardrop assessed the state of the operator's systems in August 2016 as unsatisfactory. In 2015, DVSA had established that Mr Strachan had no systems in place to monitor the Working Time Directive. An improvement notice was served on 28 January 2016. Examiner Wardrop requested evidence of compliance with that improvement notice. He produced a summary for 3 July to 29 October 2017. He found one driver exceeded the average 48 hours by 49 hours 49 minutes; 2 drivers (Flannigan and McGrogan) were missed out; Mr Strachan was not included; driver/mechanic Alan Reid worked 102 hours 52 minutes. The Tachomaster system was not being supplied with other work data. Mr Strachan was not fully conversant with the Working Time Directive. Records had not been kept for 2 years.
18. Traffic Examiner Wardrop conducted an investigation of operator Kerr Transport Ltd. Craig Kerr, director of Kerr Transport, had been nominated on the Strachan Haulage licence but had failed to tell the Office of the Traffic commissioner when the arrangement ended. During the Kerr Transport investigation, a driver Tomasz Sobczyk, was found to be using the driver card of a driver, Krysztof Lasota, who was employed by Mr Strachan. The Examiner's investigations led him to the conclusion that drivers Sobczyk and Lasota were swapping cards between them.
19. There was another driver card which was being used, that of a driver Robert Szpreglewski. His card was issued in 2013, was replaced in July 2016 as the 2013 card had been lost or stolen. Mr Szpreglewski worked for Kerr Transport but left and returned to Poland - according to an account given to the Examiner by Mr Craig Kerr.

20. Vehicle downloads from Kerr Transport showed the 2013 issue driver card for Mr Szpreglewski used in a Kerr vehicle on 30 September 2016 immediately after driving by Mr Sobczyk. The Szpreglewski card was used on 12 days between 17 July 2016 and 13 October 2016 on a Strachan Haulage vehicle OV15 OWB for which the regular driver was Mr Lasota. There was one occasion of use of the Szpreglewski card on a date between these when it was used on the Strachan Haulage vehicle.

21. Mr Lasota had no data on his card between 17 and 22 September and 24 September and 9 October 2016. The Examiner interviewed him. He could not recall why there was no data in the earlier part of the month but for the latter, he was in Poland on holiday. The Examiner considered that the use of the Szpreglewski card in OV15 OWB came about when Mr Lasota, the possessor of that card, passed it to Mr Sobczyk to use when Mr Lasota was in Poland. The Examiner concluded that the Szpreglewski 2013 card was being swapped between Messrs Sobczyk and Lasota as the need arose.

22. In respect of driver Lasota who drove Strachan's OV15 OWB, of the 12 dates analysed between 17 July to 13 October 2016 and use of the 2013 Szpreglewski card in OV15 OWB, the Examiner found 12 false records (detailed at pages 20-25) and drivers hours offences.

23. The Examiner carried out an analysis of data for April to November 2017 as from his investigations into Kerr Transport, he wanted to see if there were any indications of driving periods with 2 driver cards. He did find similarities and these related to the use of Mr Lasota's card and Stuart Strachan's card. Mr Lasota was on a 4 day trip, 24-27 April 2017, with rest periods in London, Southampton and Milton Keynes. Mr Strachan's card was used at the end of each of the days to reach the 3 rest locations. At interview on 11 April 2018, Mr Strachan said he did not do distance work, nor double manning and he had not been on a 4 day trip. The Examiner considered that Mr Strachan's driver card had knowingly been used to allow the driver to extend his driving and duty periods.

24. For the week commencing 6 August 2017, Mr Lasota had been on duty for 7 days, having failed to take a weekly rest. On 2 occasions Mr Strachan's card was used – on 11 August at start of the day and on 12 August. At interview Mr Strachan said that he would have been with Mr Lasota. The Examiner did not believe that and considered that Mr Strachan's card was used by Mr Lasota.

25. The Examiner wanted to interview two of Mr Strachan's drivers, one being Mr Lasota. On 16 April 2018, he e-mailed Mr Strachan. On 19 April, Mr Strachan replied that as from 13 April, Mr Lasota did not work for him and he believed he had returned to Poland. The Examiner considered that his interview with Mr Strachan on 11 April and that he intended to interview Mr Lasota, led to Mr Lasota leaving Strachan Haulage.

26. The downloaded data for driver Kamil Siczka revealed a daily rest offence. On another occasion, on 26 April 2017 Mr Alan Reid's driver card had been used. Mr Reid does do occasional deliveries to Bathgate and Bellshill and trailer changeovers at Tebay and other occasions when the operator was stuck. He had done a repair at Gretna and one at Grantshouse but otherwise would phone the dealer. Mr Siczka said that he had a fault at Haydock and Mr Reid came down in a van and drove the vehicle back up. This was at odds with Mr Reid's response and the Examiner was of the view that Mr Siczka had 2 cards and made a false record by using Mr Reid's card. Mr Reid denied doing the driving on 26 April 2017.

27. Mr Siczka was interviewed on 2 April 2018. He had been with Strachan Haulage for 8 years and received his instructions from Mr Strachan. He received infringement sheets. He denied using anyone else's card, as he was not stupid. He said that on 26 April there was a breakdown and Alan Reid came down to fix it. He could not explain why Alan Reid said otherwise. The journey on Alan Reid's card was 371kms between 01:36 and 06:06.

28. Analysis of data between March and May 2017 showed 5 instances of driving with no card, 3 of these immediately after the removal of Mr Robert Spendiff's driver card. Extending the analysis to August 2017 revealed a further 6 instances of driving off the card. This was done to hide weekly rest

offences. Mr Spendiff did this to get home. The Examiner found a range of drivers hours offending by Mr Spendiff – false records, exceeding daily driving, insufficient daily and weekly rest, exceeding the fortnightly driving limit on 16 occasions between March and August 2017.

29. Further offences were found in respect of driver David Macleod (one instance only) and driver Eugeniusz Maczynski (4 offences including driving without a card and insufficient daily rest).

30. Mr Strachan was interviewed on 11 April 2018. He had held an operator licence for 29 years and gained his transport manager CPC 10 years ago. He had applied in 2015 to vary his licence to operate from 2 new operating centres and to increase his vehicle and trailer authorisations. He asked for an interim for the increased authorisations but heard nothing back. He was told it was due to an investigation. He admitted that he had exceeded his authorisation of 8 vehicles and produced a written statement dated 11 April 2018 (page 144 of Appendix 1 of the brief). Mr Strachan wrote:

“To whom it may concern Back in September 2015, I Stuart Strachan applied for 5 extra operator licences. I needed these licences for new work I had been contracted to. I had completed my business plan and purchased extra vehicles to cover this.

“My application for the increase was approximately 9 weeks into the application with which I paid extra for an interim licence, when I had a vehicle stopped for not having a number plate on their trailer. I could only have been a short time away from having this approved, this then caused a DVSA investigation which then put my application on hold.

“The investigation has now been ongoing for 2 years and seven months, because of this situation I have had to sell vehicles at a significant financial loss. This is the reason I have exceeded the margin on the licence.

“I would have expected after 2 years and seven months that this matter would now have been concluded.

“As I have had no prohibitions in this time my OCR’s scores are a green 3, my MOT pass rate is 100% over a 2 year period.”

31. He was parking vehicles in Livingston and working at Motherwell. He attributed the operation of excess vehicles to the time factor of 2 years 7 months for the investigation. He had had no problems with drivers hour, his OCRS score was good and his MOT pass rate good. Asked about being the registered keeper of up to 12 vehicles, he reverted to his earlier answer.

32. It was put to him that the first download of vehicles only happened on 7 December 2015 after Examiner Laidlaw requested tachograph data on 4 December 2015. He said he could not remember, it was so long ago. He was asked why in December 2015, he replaced the tachograph units on 10 vehicles which meant his prior records were not retained. He said that Examiner Laidlaw said to start again and he would ask for further records.

33. It was put to him that 3 vehicles - DF15 ZSK was not downloaded for 7 months; OV15 OWB not for 8 months; and RF16 XUL not for 6 months. He said that was because the licences did not come through.

34. He recalled getting the Working Time Improvement Notice of 28 January 2016. He now has Michael Gray doing WT. The current report was ongoing and he could not produce it. It was put to him that the failure to produce showed there was no system. He said there was a system. He was asked about Alan Reid and described his duties. The longest distance he would drive would be to Tebay Services and he would be back home every night. He was also asked about the use of record sheets.

35. He schedules the drivers. He was unaware that Robert Spendiff had been on duty for more than 6 days. He must have done it off his own back and he was taking the truck home, usually at a weekend.

36. The name Robert Szpreglewski had not come up in his analysis. He scheduled Mr Lasota’s duties. He did not know if Mr Lasota had been using another driver’s card. He was asked about Mr Lasota’s trip commencing on 24 April 2017 and use of his (Mr Strachan) car. He did not remember

going to London. He denied giving his card to Mr Lasota. He was shown Mr Lasota's record sheet for week commencing 6 August 2017 which showed Mr Lasota on duty for 6 consecutive days. He was asked why his driver card was inserted at 03.13 on 12 August 2017 and said he may have covered. He said Mr Lasota could have got his card if he had left it in the truck. Mr Lasota had recorded being on duty on the reward sheet for 13 August and Mr Strachan's card was used on that day.

37. Asked about Mr Kamil Sieczka's journey on 23 March 2017, Mr Strachan said he went out and got him. Further questions were put to Mr Strachan who was unable to give answers due, he said, to the lapse of time.

Mr Stuart Strachan's evidence

38. Stuart Strachan has traded as Strachan Haulage for 29 years, mostly general haulage - in the last 15 years working with Mitsubishi and the MoD and doing backloads for Tesco. His current licence was granted in February 1996 and he knew it was authorised for 8 vehicles and 8 trailers only. On 16 October 2015 he applied to add a new operating centre and to increase to 13 vehicles and 12 trailers, that is an increase of 5 to the vehicle fleet. He wanted the extra vehicles for a contract at Mossend, at a bonded warehouse and to facilitate additional MoD work. He proposed to start the new work between September and November 2015. He was 9 weeks into the new application and had paid extra for an interim; thought he was days away from having his application approved when his vehicle was stopped for an S marked prohibition, that of 3 October 2015. He had bought extra vehicles and had started working them as he was unaware that he was not going to get the extra licences through. He bought 3 artics and a 4 wheeler in August and September 2015. By the time of the roadside stop in October 2015, he was openly operating over 8 vehicles. He operated the 3 artics. The intention for the 4th vehicle was to take pallets from Mossend to Rosyth. He could park the vehicles at Mossend and at Mitsubishi, Livingston. He thought it was ok to put the extra on the road as he had no history of any serious problems. He was confident of getting an interim and assumed his application would be granted. He did not realise that the stop on 3 October 2015 would lead to a complete investigation. He thought it was a "one off".

39. When Examiner Laidlaw got in touch in late 2015, he gave him what he had but he was not happy. Then Examiner Laidlaw was ill for a year and he came back and said to forget the past and he would start again with another 3 months download which he provided as far as he could. He was aware that Examiner Laidlaw was quite happy.

40. By December 2015 when Examiner Laidlaw came in, he had already started using the Mossend site. He could not recall if he discussed that with Examiner Laidlaw. The number of vehicles he was using was discussed. He handed a printed letter of explanation to Mr Laidlaw as to why he was operating extra vehicles. He kept using the extra vehicles expecting the increase to come through. He was not aware that he was not going to get any increase until this was resolved.

41. In January 2016, Mr Laidlaw issued the Improvement Notice and that is when he introduced the time sheets; to write the start and finish times but they did not work. He did not see a lot of the drivers for weeks and sometimes he was guessing the dates on the sheets. Before Mr Laidlaw came in, he was not doing much about the WTD. Mr Laidlaw was happy with the time sheets he introduced. He told Mr Laidlaw he had introduced Tachomaster. He was not aware of any infringements. He could not recall any contact after January and August 2016.

42. He continued to operate the extra 3 vehicles. During this time, he also bought replacements for older vehicles. He was operating 11 vehicles in total from late 2015. He was on his way back down to 8. He began to reduce the number once he realised the licence increase was not going to be granted. He scaled it back to reduce the financial burden. By January 2016, he was still over.

43. If he had stopped operating the extra vehicles, his service to his customers would have been very poor and could have resulted in the loss of the Mossend and MoD work. All of the extra 4 vehicles were on finance and he lost money. From January to August 2016 there was no contact from Examiner Laidlaw and he carried on as normal. He thought he was down to 9 vehicles then.

44. The maximum he operated was 11 but he was only guessing. He came down to 8 vehicles in March/April/May 2017 by a rough estimate. As at the date of the Inquiry, he had 8 vehicles on the road and 2 parked up off the road for months living in the hope that he would get the licence to put them back on. They are costing him on finance. The 2 vehicles parked up were ZSK DF15 and OB15 OWB – de-specified on 30 April 2018 when PO18 RWV and PO18 RUX were specified. He acquired the '18' plates about then. He had 10 vehicles in possession.

45. On 26 August 2016 Mr Laidlaw completed an Operator Report and they went through it. He could not recall there being any concerns. He thought he had done well. He did not see Examiner Laidlaw again. He knew he had problems getting up to speed with Tachomaster but could not see beyond the infringement sheets as he was not computer literate. He did not recall any discussion with Examiner Laidlaw about how many vehicles he was using. Examiner Laidlaw did not raise any issues about where the vehicles were being parked. So at August 2016, he had no feedback from DVSA about what his drivers hours data showed.

46. In respect of his own monitoring of his own drivers, he had a lack of knowledge about Tachomaster. He could not go into the guts of the reports in the manner of Examiner Wardrop or Mr Gray. He did not know what a missing mileage report was. In November 2017 he started to employ Mr Gray. It took him that length of time as he was in a bit of a mess with it but realised he was not very good. Not having heard from Examiner Laidlaw again, he took it that no news was good news. On advice from a colleague, he contacted Mr Gray and that opened his eyes to his inadequacies. Mr Gray showed him serious infringements which he could not see for himself.

47. Vehicle and driver data is now downloaded every 30 days. He downloads every time he sees a driver. Mr Gray does the analysis every month and forwards his findings with WTD, missing mileage and infringement reports. When he gets any infringement reports he discusses them with the driver and they both sign.

48. In May 2017 he made a further application to add an operating centre and remove another. The change to Coralinn was made in May 2017 as it was a fantastic spot parallel to the motorway with plenty room. The intention was to have 2 operating centres – at Coralinn and at Mossend. He started parking vehicles at Coralinn. He thought it would be approved without a problem. It is an ideal place. He did not know that he had not been authorised to use it.

49. In December 2017, Examiner Wardrop visited and completed a Traffic Examiner Operator Report. He could not recall if the Examiner advised him to ask for an interim direction for the operating centres. He first realised that there was an issue with drivers hours and tachographs when Examiner Wardrop called him to the interview on 11 April 2018. He pointed out 3 significant failures – a driver using his card; a driver pulling his card and missing mileage; and another driver using Mr Reid's card. That interview on 11 April 2018 was the first of him knowing there was a problem.

50. There is no financial connection between him and Craig Kerr. Mr Kerr was a former employee who went and started on his own. Mr Kerr's operation grew bigger than his. They are friendly. They helped each other with Lidl runs. Mr Kerr was ambitious and wanted to do international runs but did not have an international CPC whereas he did. Kerr did one trip internationally and saw the difficulties and that was the last one. He was only transport manager for a matter of weeks, so very long ago. He had no involvement with Mr Kerr's business since then. He did not know Thomas Sobczyk and as far as he was aware, Thomas Sobczyk had not worked for him.

51. Mr Lasota was his employee for 6 years until about a month ago. After Examiner Wardrop pointed out that his own card had been used down south, he spoke to Mr Lasota about that date. Mr Lasota admitted using his card. He put him on suspended pay and down to basic pay. He did not sack him as that is not easy. He uses Mentor Business Services and they advised questioning him. He was not aware of the issues with Mr Lasota until he saw the Examiner's brief. He knew that there was an investigation into Kerr Transport but his knowledge was limited. He acknowledged that it could be thought of as turning a blind eye.

52. For Mr Lasota to have his card, he must have left it in the truck as he does not drive often, not every week. If he leaves it in a truck, the next driver usually takes it out and leaves it in the Portacabin desk. He had not suspected his card was missing. Mr Lasota's use of his card had not come up in Mr Gray's retrospective analysis as the cards were not breaking the law; it would not show up unless there was something to corroborate. Mr Gray was basing his work on the driver card and VU data and blind to other documents. He, Mr Strachan, was the one who was in a position to know who was driving on any day.

53. On Mr Gray's e-mailing of infringements he would not have seen that his driver card was being used. He was not getting reports in respect of drivers for whom there were no infringements. Only infringing drivers names were produced. Thus, he was not seeing the names of all the drivers revealed in the VU download. He now had driver allocation sheets which Mr Gray will be able to match to the Tachomaster data.

54. The driver time sheets were introduced after the WTD Improvement Notice but became obsolete when that was done by Tachomaster. He did have a quick look at them – for example, for night out money. He did not look at or analyse what the drivers were declaring. He did nothing about Mr Lasota's time sheet over 4 days.

55. In respect of Mr Siczka's journey and use of Alan Reid's card, that was Mr Siczka illegally using Mr Reid's card. Mr Reid said he did not drive that journey; that there was no way he had driven that distance. Mr Siczka still works for him but not on distance work. Mr Siczka told them he was down south, had a problem with his child, but he did not believe that to be true. Mr Reid's card was one minute over the 4½ hours but Mr Gray would not have told him of that as Mr Gray only sends infringements on which DVSA would act. So Mr Gray is not giving a full analysis but only where DVSA would give a fixed penalty or worse at the roadside. The VU prints are only infringement reports.

56. Regarding Mr Robert Szpreglewski and the 5 instances, March to May 2017, of him pulling the card, Mr Gray brought that to his attention and he gave Mr Szpreglewski a final written warning and not long after, they parted company. Mr Szpreglewski had met a girl from Thailand and he would rush home to help her with visa problems. Prior to Mr Gray's involvement, he had no idea Mr Szpreglewski was pulling his card.

57. Other driver infringements were identified by Mr Gray (driver David Macleod (minor), driver Eugeniusz Maczynski).

58. In future, Mr Reid whom he had appointed to be Compliance Manager, would assist him and he was putting Mr Reid through the transport manager CPC.

59. If the licence were revoked, a good business with good employees would disappear. It would cause him financial hardship as all trucks are nearly new with high levels of finance. The operating centres are rented. He has 13 employees. Suspension would mean the same outcome. He could not imagine a period of days or weeks when the business could survive. At this point, with so little from Mr Strachan on the impact of regulatory action, I pressed the questioning further. All of his answers came back to the fact that he could live with 8 vehicles, his current authorisation. 2 vehicles are dedicated to MoD work. He needed 2 vehicles a day for Mitsubishi. In relation to suspension, he could sub-contract the work of 6 vehicles but the MoD work would be difficult to sub-contract. The MoD work was good consistent work and if he lost it, he would fill it back with ad hoc haulage.

Mr Alan Reid's evidence

60. As from the week before the Public Inquiry, Mr Alan Reid, for no additional wage, became designated as Company Compliance Officer. He had worked in the past for Mr Strachan for about 10 years and his background was in maintenance. He used to work for himself but in January 2017 came back to work for Stuart Strachan. He deals with vehicle roadworthiness, PMI 6 week scheduling, MOTs, repairs, to ensure all vehicle and defect paperwork is in order. He also undertakes actual maintenance.

61. He is now checking driver licences and CPC cards. He does not have anything to do with the downloading and analysis but if he passes his transport manager CPC and becomes transport manager, it will be he and not Michael Gray who will be doing the analysis and cross-referring.

62. In respect of the DVSA investigation, he had been working with Mr Strachan on the shortfalls, to move forward. He confirmed he did not do the driving shown on his card for 26 April 2017. He had left his card in vehicles before after forgetting to take it out. The card would be given back to him by the next driver finding it. If the driver did not hand it back to him, it would be in the office in a drawer, not in plain sight. Any driver using his card would have to have taken it without his permission. He did not believe Mr Strachan would knowingly allow his card to be used. He would attribute what DVSA found as coming from Mr Strachan being too laid back in his attitude and not up with the times. He was not laid back in getting business but what had been highlighted was that on compliance things had accumulated. After the Examiner brought matters to Mr Strachan's attention, he was mad with the drivers for putting him in that position and for him not knowing about it. He believed that Mr Strachan did not know. If he thought Mr Strachan was knowingly deceitful, he would not be working for him.

Unsigned statement by Mr Gray

63. One of the operator's productions was an unsigned statement dated 10 August 2018 from Michael Gray who stated himself to be Transport Consultant for John Stuart Strachan. The statement can be referred to for its terms but in brief states that he was approached in October 2017; was told of the DVSA investigation; was contracted from November 2017 to undertake drivers hours analysis and infringement reports. He visits the operator once a month for an hour. He uses the operator's Tachomaster account to generate WTD reports. He has not detected any offences of a serious nature since November 2017. Mr Strachan himself downloads all the driver cards and vehicle units. He will continue to do monthly checks.

Closing submissions

64. In submissions, at start of the Inquiry, and more fully at its close, Ms Hadzik put it that her client's position was one of incompetence and incompetence as a transport manager, not dishonesty. This was an unattractive case. The Examiner's report highlighted serious offences by drivers employed by Mr Strachan. She posed the question whether it was more likely than not that Mr Strachan would be compliant in future. Mr Strachan had accepted his shortcomings. He disputes how quickly he could have reacted to the driver infringements. He first became aware of the systems issues at the Traffic Examiner interview of September 2017. It was April 2018 before he was aware of the drivers hours issues and offending. He did not knowingly allow his or Mr Reid's cards to be used – it arose from a lack of control over where their driver cards were.

65. Mr Strachan had openly admitted and accepted throughout that he had operated more than the authorised number of vehicles and at unauthorised operating centres. He voluntarily attended for interview and answered Examiner Wardrop's questions openly and honestly.

66. Mr Strachan was aware of DVSA's interest from 2015. The use of Mr Strachan and Mr Reid's driver cards was in the middle of that period. It would be foolish to knowingly allow a driver to use another card when under the microscope. The suggestion from the Examiners that the tachograph units were replaced to obstruct DVSA was very serious. It is not known what the data would have shown. The contrary explanation by Mr Strachan is that he wanted to move to 2nd generation tachos with driver alerts.

67. In respect of the effect of regulatory action, Ms Hadzik asked that I distinguish Mr Strachan's role as operator and transport manager. She submitted that in this case there were reasons why such a distinction could be made. Mr Strachan had signed the licence undertakings. He is competent in certain areas of business – in relation to maintenance everything is positive. He had implemented systems to focus on the running of the business and which will enable the transport manager role to

be fulfilled by others. Mr Reid has worked on the maintenance side and has produced results. It is openly accepted that there were shortcomings with drivers hours and tachograph compliance. He was not marrying up the time sheets with the details of who was supposed to be driving on particular days. This was capable of being resolved.

68. Mr Strachan has been in the industry for 29 years and worked hard. He did not deserve to lose that. Mr Reid has confirmed his intention, should he pass the CPC, to become transport manager. There is Mr Gray for monitoring drivers hours and tachographs and Mr Reid on the maintenance side. Mr Reid's elevation to Compliance Manager is relatively recent and remains to be seen. The serious nature of the allegations was recognised but what happened was not deliberate and he was not complicit with the drivers. The operating centre and excess operations were openly admitted. He did not want to be disqualified and wants to continue in the operator licence regime.

STC Guidance and case law

69. As well as having regard to the Senior Traffic Commissioner's Guidance documents and in particular nos. 5 and 10 and the particularly helpful annexes, inter alia I have had regard to the undernoted case law:

Bryan Haulage (No.2) T2002/217 (putting an operator out of business)

Priority Freight T2009/225 (can an operator be trusted)

Thomas Muir (1999 SLT666) decision of the Court of Session (integrity of the regulatory regime)

Martin Joseph Formby T/2012/34 (trust)

Aspey Trucks T/2010/49 (perception of the compliant industry)

Arnold Transport & Sons Ltd v DOENI NT/2013/82

C G Cargo and Sukhwinder Singh Sandhu T2014/41 (disqualification)

David Randle T/2017/67 and Yvonne Bartram T/2018/003 (transport manager disqualification)

Alistair Walter T/2017/55 (indivisibility of repute as operator/transport manager)

Dundee Plant Company Ltd T/2013/47 (effect of regulatory action).

My considerations

70. On 4 December 2015 Examiner Laidlaw requested documents including tachograph data for August to October 2015. There was discussion between the Examiner and Mr Strachan regarding the format of the data. After the request of 4 December 2015, but before any compliance with the request, all of Mr Strachan's vehicles were sent to MAN to have the old tachograph units replaced. The old units were destroyed. Mr Strachan said he had changed them from 1st to 2nd generation tachographs.

71. On his visit of 21 December 2017, Examiner Wardrop noted from the company card that the first downloading was on 7 December 2015, that is 3 days after Examiner Laidlaw's letter. The company card was issued on 20 February 2013. Thus between that date and 7 December 2015 there had been no vehicle unit downloadings. Examiner Wardrop's analysis revealed "huge failings" by the operator. For 16 vehicles operated between April 2013 and December 2015 there were no downloads at all.

72. In 2015 and 2016 Traffic Examiner Laidlaw found that Mr Strachan was operating more than 8 vehicles. Mr Strachan was registered keeper of more than 8 vehicles from August 2015. Traffic Examiner Wardrop analysed downloaded data from 2016 to November 2017. During 3 periods more than 8 vehicles were operated: March to June 2016 19 days; March to May 2017 34 days; and September to November 2017 61 days.

73. Registered keeper details show Mr Strachan as keeper of 10 vehicles in March 2015; of 11 vehicles from June 2015; of 13 vehicles from August 2015. Vehicles were not specified within 28 days as is required. Not all vehicles could be specified as the maximum authorisation had been reached. The operator attributed his excessive use to the delays in the DVSA investigation.

74. All operators are subject to the licence undertakings. This licence goes back to 1996 and has been subject to the 5 yearly checklists which also highlight the licence undertakings. The undertakings have been refined over the years but operators are in no doubt that these are requirements they have to meet. The licence undertakings reflect the legal requirements on operators as well as minimum good practice.

75. This is a haulage business. It is not a business to which haulage is incidental. Mr Strachan is long established in the industry. He is his own transport manager. The operator licence is crucial to his business. Without it, his business would have to sub-contract or freight forward or do something else.

76. He has been at Public Inquiry in the past for he failed to maintain his vehicles to the required standards of roadworthiness. His roadworthiness compliance required nudging in form of warning letters and a call to Public Inquiry. The overwhelming number of operators do not require such interventions. He is not new to operator licensing. He knows that authorisation comes from the Traffic Commissioner and cannot be self awarded.

77. An operator's operation of vehicles under an operator licence has to be compliant from even before a wheel is turned. The onus is on the operator to be compliant. The onus is not on DVSA (nor was it on the VOSA or predecessor agency) to make an operation compliant or to identify non-compliance for the operator. The responsibility is full square on the operator. I spell this out for the language and approach of Mr Strachan in this case was to seem to think he was okay to do what he was doing until someone else gave him the evidence and took charge of him.

78. As at 2015 I find that Mr Strachan was a non-compliant operator. He did not have systems in place to comply with the drivers hours and tachograph regulations. He was not downloading digital tachographs when he should have been. I find that it was not a coincidence that all 10 of his vehicles had their tachograph units replaced immediately DVSA took an interest in his drivers hours compliance. He said he did it to upgrade to better equipment. That certainly was a useful outcome but the timing beyond doubt was to remove any chance of DVSA's Examiner having access to the data needed to analyse drivers hours. The operator could not show that analysis pre-dated the change of tachographs and that fortifies me in my conclusion.

79. In 2015 DVSA began to get wind of Mr Strachan operating more vehicles than he was entitled to do and that drivers were working long hours. Thus DVSA began an investigation into Strachan Haulage. This would have happened anyway but the S marked prohibition became another reason to look at the operator. The intelligence which came to DVSA proved accurate for Mr Strachan indeed was operating in excess of his authorisation of 8 vehicles and he commenced such unlawful operating **not** after self-righteously waiting 9 weeks after making an application or awaiting the outcome of an interim request **but in advance of even lodging an application for an increase**. I have deliberately used bold here for Mr Strachan has tried to attribute his excessive use to his belief that his variation application would be granted. It has never been lawful for an operator to operate in excess of authorisation. Mr Strachan blatantly put extra vehicles on the road sometime in 2015 when he gained extra work and before he even applied for an increase in his vehicle authorisation. The intelligence proved accurate in its other accusation, that Strachan drivers were working excessive hours.

80. The moment DVSA became aware that there was unlawful operation and made my Office aware that Mr Strachan was subject to an enforcement investigation, the variation could not be granted. The letters of acknowledgment from Leeds made it clear there was no authority to operate until a decision was made granting such additional authorisation.

81. Mr Strachan did not cease operating excess vehicles. He continued to operate such and admitted such and Examiner Wardrop found evidence of such. Mr Strachan defiantly and with his own form of self-justification continued unlawful operation. He excuses himself by re-iterating the time taken to make a decision. Yet he does not put into that equation the stark truth that as 2015, 2016, 2017 and 2018 went by and Examiners dug into his business, they were not uncovering a shiny compliant business but one which did not have credible systems for ensuring compliance with the WTD and with the drivers hours and tachograph rules. How could he possibly think he was entitled to expand his business into a larger fleet serving such esteemed customers such as the MoD, Mitsubishi and Tesco when his business was serially non-compliant and he by his own admission, an incompetent operator and transport manager? It beggars belief that he could be aggrieved and complaining at not getting a licence authorisation increase. It was wishful thinking on his part. I do not reward non compliant operators with increased authorisations.

82. The course of the DVSA investigations did not run smoothly. Examiner Laidlaw was thwarted in his initial dealings by the absence of data and need to start again. His absence did not assist but on his way going from DVSA, a highly experienced Examiner was put to the task. Examiner Wardrop was particularly positioned to look at Strachan Haulage given an investigation into Kerr Transport and some interesting over-lapping features.

83. To state an obvious – the one person who was in place to know or find out what was happening within Strachan Haulage and its operations was Mr Strachan. He sourced the business, dealt with the customers, and scheduled the drivers. He was at the heart of the operation and knew what work was being done. It is inconceivable that he did not know that the drivers hours rules were being stretched to get the work done. He did not need to wait for Examiner Wardrop to tell him what was happening in his own business – he had all the evidence he needed and more to know what was happening. Simply it did not suit him to have compliant systems in place. Simply it did not suit him to schedule work differently.

84. He says he was not aware that driver Lasota was using his card. This begs the question of how driver Lasota came to be allocated that work given that it could not have been done lawfully on his own card, by him alone. Mr Strachan could not explain why the work had been scheduled as it was. For this reason I consider it more likely than not, that Mr Strachan's card was available to be put in to play when driver Lasota needed to stop. That is the most obvious explanation. I do believe there to have been connivance given the general neglect of ensuring compliance. Similarly for Mr Siczka who was way down south running out of hours, it suited the business for him to have another card to use and this time it was Mr Reid's card.

85. Driver Lasota was using Mr Szpreglewski card to extend his hours – he did this in the service of Mr Strachan. I am in no doubt that Polish drivers Sobczyk and Lasota were swapping cards and that they were using Mr Szpreglewski's card to extend their respective driving times. Mr Strachan must have known what was going on because he was the scheduler of the work, he took on the business and he paid driver Lasota, who was his longstanding employee of 10 years. There was laxness in adherence to drivers hours and a lack of meticulousness in checking driver data against vehicle data against timesheets or equivalent for pay purposes. This was an environment in which false records could flourish.

86. Mr Strachan brought in Mr Gray. He did this because he knew DVSA was interested in him and that he had nothing which remotely could pass muster in terms of systems for adherence to drivers hours and tachograph analysis. The hiring of Mr Gray can be viewed as a positive but not fully so for that hiring served as a fig leaf to what was going on below the surface. Mr Gray's analysis was superficial and confined to infringement reports. There was no cross checking of driver identities or other documentation. Inevitably it was limited to what was downloaded by Mr Strachan i.e. what went

into Tachomaster to be analysed. On the worst view, Mr Gray was being used as a fig leaf to give the appearance of compliance. During the Inquiry I described Mr Gray's statement for the Inquiry as superficial. He brought something to this operator and undoubtedly was better than nothing. A positive was the printing out of infringement reports which the drivers and Mr Strachan had to sign. Drivers such as Mr Maczynski received written warnings.

87. On the matter of operating centres, I agree with Mr Strachan that his proposed new operating centres appear suitable and attracted no representations or objections. However, they were tied in with his request for additional authorisations and thus his applications were stalled. He did not ask for interim directions. If this case was only about the use of these 2 sites, I could take a more benign view of matters given that the sites do appear to be suitable and the Examiners expressed no concerns, assuming that the variation applications to use them had been granted.

88. In respect of positive features of this operator, he has not had a clear run of full compliance for 29 years. Most operators do not ever face a call to Public Inquiry and he has been at Public Inquiry before and it took regulatory action and some effort to get the maintenance systems in to good order. That appears to have been achieved. That is a positive. It could also be said to be a positive that he was so blatant in his admission of excess operating. Whilst he was vague on extent, he did not pretend that he was only operating 8 vehicles. Candour has quality to it.

89. He was civil to the Examiners and attended for interviews when requested. He did not provide the information requested by Examiner Laidlaw in 2015 but by the time of Examiner Wardrop's involvement he was attentive and Examiner Wardrop was not frustrated in his investigation.

90. Mr Alan Reid who appears to be effective on the maintenance side of the operation has been given additional responsibilities and was to be presented for the CPC examinations on 7 August 2018. Given that Mr Reid was put forward for the examinations without any obvious opportunity for tuition or study, I wonder how genuine the expectation was that he would pass. [My Office does not appear to have been told that he has passed nor has a TM1 nomination come in for him as might be expected given the evidence was that he would become a transport manager.]

91. I was not assisted when the question of impact of regulatory action on the licence was asked. The case of *Dundee Plant Hire* sets out that Traffic Commissioners need evidence from operators. From this operator there came nothing but vagueness and that he could cope with his current authorisation. I was concerned when I pressed the question that he came back very quickly with that he could sub-contract the work of 6 vehicles. I have to wonder whether I can trust an operator to comply with regulatory action and I suspect Mr Strachan may think he could sub-contract his own vehicles and maybe his drivers. I am mistrustful of his evidence.

92. I have considered the positives and the negatives. The positive of any weight is the longevity in the industry. I agree with Ms Hadzik's description of this case as an unattractive case for Mr Strachan was an unattractive witness (and before he gets hurt feelings, I am not discussing his appearance – he was as bonny on the eye as any of his counterparts) in that he showed no remorse or attrition for the wrongs of his business. He seemed to think it was okay to be lacking in knowledge, that somehow DVSA would sort that out for him and tell him where he was wrong; that it was okay to operate in excess whilst Leeds went through the motions of the 9 weeks processing; that it really had nothing to do with him that some of his drivers were using other persons' cards including his own; that his own card could get into the hands of others. Drivers sense the culture of an operation. It is trite experience in the haulage industry that if the operator and/ or transport manager (in this case, one and same) do not bother to do downloads or check data, then drivers can take that as a signal that it is acceptable to push the limits.

93. I have to ask myself do I have to put this operator out of business and complementary to that, could I trust this operator in future? Given that Mr Strachan is his own transport manager and no other person has in fact been nominated to take on that role either alongside him or in substitution, my consideration of Mr Strachan's repute as a transport manager becomes entwined with his repute as operator. The case of *Alistair Walter* identified the indivisibility of repute. On the facts, this case falls within those deemed severe in the Senior Traffic Commissioner's Statutory Guidance Document

No.10 Annex 3 and thus revocation and disqualification are open to me as the regulatory outcomes of this case. Indeed in my first draft, such were the outcomes.

94. One aspect has held me back from such a course and that is the longevity of this business and Mr Strachan's mixed up mind. I believe it is just about open to me to hold back from revocation but to can give him the toughest of "reality checks". However the order I am going to make may well take him to the brink. If the business does not survive the order which I am about to make, then as was said in *Dundee Plant*, so be it. He is the author of his own serious breaches of the licence undertakings and reputable operation. The relationship of trust between me, as Traffic Commissioner, and him as operator hangs by a gossamer thread.

95. I will hold back from revocation and disqualification – **but Mr Strachan should be in no doubt that he stares at that void**. Instead, I will curtail this licence to THREE (3) vehicles and FOUR (4) trailers and that for a period of at least two years. No increase in authorisation can be applied for earlier than the expiry of two years and must be made by way of formal variation – that is there will be no automatic return to 8 vehicles and 8 trailers at the end of 2 years. My reasoning for such a reduction in authorisation and to a level which will cause financial grief to Mr Strachan, is that this is a severe case given the lack of systems, the drivers hours offending, the use of others' cards and that the imperilling of others' safety through risk of driver fatigue cannot be readily excused and forgiven. Mr Strachan allowed the rest of us to be at risk. He now has to pay the price for that. He also has to pay the price of offending against fair competition - he will have undercut others to get the MoD, Mitsubishi, Lidl and Tesco work. He will have undercut good decent, honest, caring operators whose drivers were not pulling their cards or using others' cards or slicing their breaks or rest. He has been doing this since at least 2015 and from 2015 operated with excess authorisation – and for that reason the curtailment cannot be in weeks or months but has to be measured in years to, as I have put it in other decisions, "re-calibrate" fair competition. He went maverick in 2015 when he put more vehicles on the road as a non-compliant operator. Now I show him the consequences of such and by the level of the curtailment I am giving more than a nod to fair competition. I am acting to release his work to the honest compliant market.

96. Technically I am allowing Mr Strachan to retain his repute as transport manager given the indivisibility of repute and that loss of repute has to be a proportionate finding. I am doing this because I can, but I direct that he attend a transport manager refresher course of at least two full days duration and that by 31 May 2109 with evidence of attendance submitted without any delay or reminder to the Office of the Traffic Commissioner in Edinburgh. If need be, he should travel to England for such. If he does not go on such a course, he can expect to be recalled to Public Inquiry.

97. My orders will hurt. They are intended to hurt. Mr Strachan can count himself lucky to be left with a licence at all. I hope that those advising Mr Strachan will get that through to him.

98. In respect of the outstanding variation applications, the existing operating centre c/o Oliphant, Lower Bathville, Armadale EH48 2JS will be removed from the licence. Two new operating centres being 21 Coddington Crescent, Euro Central, Mossend, Motherwell ML1 4YF and Coralinn House, 4 Royston Road, Livingston EH54 8AH will be added but the maximum use at any centre will be limited to the licence authorisation level of 3 vehicles 4 trailers from 31 March 2019..

Summary of my decisions

99. With effect from 23.59 on 31 March 2019, the operator licence held by Mr John Stuart Strachan is curtailed in terms of section 26 of the Goods Vehicle (Licensing of Operators) Act 1995 to THREE (3) vehicles and FOUR (4) trailers and that for a period of at least two years. It will be two years before this operator can apply for any variation to increase the authorisation on this licence.

100. Mr John Stuart Strachan is given the severest warning it is possible to give an operator or a transport manager short of a finding of loss of repute as operator and as transport manager. I direct that Mr Strachan attend a transport manager refresher course of at least two full days duration and that by no later than 31 May 2019 with evidence thereof to be provided to the Office of the Traffic

Commissioner in Edinburgh without delay or reminder. Should he fail to do so he will be recalled to Public Inquiry.

101. The variation applications to remove c/o Oliphant, Lower Bathville, Armadale EH48 2JS; and to add 21 Coddington Crescent, Euro Central, Mossend, Motherwell ML1 4YF and Coralinn House, 4 Royston Road, Livingston EH54 8AH are granted with immediate effect but subject to the limit of the licence authorisation from 31 March 2019.

Joan N Aitken OBE SSC
Traffic Commissioner for Scotland
Edinburgh

16 February 2019