

IN THE SCOTTISH TRAFFIC AREA



DECISION OF THE TRAFFIC COMMISSIONER FOR SCOTLAND

In the matter of the

AFS Scaffolding Limited
OM2017633

Public Inquiry held at Edinburgh on 22 July 2019

Decision

1. Pursuant to adverse findings under section 26(1)(c)(iii), (e), (f) and (h) of the Goods Vehicles (Licensing of Operators) Act 1995 ('the Act') AFS Scaffolding Limited no longer satisfies the requirement of section 13B of the 1995 Act - fitness. Accordingly, operator's licence OM2017633 is revoked from 23.45 on Tuesday 3 September 2019.
2. AFS Scaffolding Limited is disqualified from holding or obtaining an operator's licence in Great Britain for a period of FIVE YEARS in terms of Section 28(1) of the Act from 23:45 on Tuesday 3 September 2019.
3. Mr Ross Findlay, Director, is disqualified from the date hereof from holding or obtaining an operator's licence or being a director of any entity that holds or obtains such a licence in Great Britain for a period of FIVE YEARS in terms of Section 28(1) of the Act from 23:45 on Tuesday 3 September 2019.
4. S.28(4) of the 1995 Act shall also apply to the disqualification order made in respect of Mr Ross Findlay for a period of FIVE YEARS in that if he is a director of, or holds a controlling interest in, a company or a subsidiary of a company which holds an operator's licence, or operates goods vehicles in partnership with a person who holds an operator's licence, then the licence of that company or person shall be liable to revocation, suspension or curtailment in terms of S.26 of the Act.

Background

1. AFS Scaffolding Limited (OM2017633) (hereinafter referred to as 'the operator') was incorporated on 26 October 2017. The operator is the holder of a restricted goods vehicle licence that authorises the use of one vehicle. At the date of this decision, Mr Ross Findlay is the operator's sole director. A former director, Mrs Alison Margaret Shewan, resigned on 20 March 2019.
2. The operator applied for an operator's licence on 11 December 2018. A report dated 13 December 2018 by Mr James Cobban, Traffic Examiner, which referred to encounters involving motor lorry YN07 FPZ was submitted to my office. It was alleged, amongst other things, that the vehicle was being used for the carriage of goods in the course of business by the operator without an operator's licence.
3. The operator was called to public inquiry before the Deputy Traffic Commissioner on 25 February 2019 in respect of the licence application. Mr Ross Findlay attended on behalf of the operator. Mr Findlay admitted at the hearing that the operator had operated vehicle YN07 FPZ unlawfully and without an operator's licence. He advised that it had done so in error on all but one occasion. On the one occasion the vehicle had knowingly been used laden with scaffolding in connection with his business, his evidence was that the operator had not charged for the work done. It had been an emergency and he had done a favour for a friend.
4. His evidence at the Public Inquiry was that vehicle YN07 FPZ hadn't moved since 10 December 2018. It was parked up at his maintenance provider where he had taken it and it hadn't been driven anywhere since.
5. The Deputy Traffic Commissioner granted the operator's application for a licence but deferred its coming into force until 23:59 on the 28 of March 2019. Mr Findlay was advised of the Deputy Traffic Commissioner's decision to defer the coming into force of the licence at the end of the hearing. A letter confirming the details of the decision was sent to the operator on 25 February 2019.

The Call to Public Inquiry

6. A further report by Mr Cobban, dated 26 March 2019, was received by my office. The report alleged that a roadside encounter on 23 March 2019 had revealed that vehicle YN07 FPZ was in use without an operator's licence.
7. The operator was called to Public Inquiry by letter dated 24 May 2019. The call up letter made reference to Section 26(1)(h) of the Act only. The letter did, however, put the operator on notice that I would consider evidence relating to matters addressed in Mr Cobban's report of 26 March 2019. In addition, the case summary within the brief which accompanied the call up letter made detailed reference to all matters at issue. The Inquiry was fixed for Monday 1 July 2019. Mr Findlay sought an adjournment of the hearing, due to his being on holiday, which I granted.
8. On 17 July 2019 an addendum report by Mr Cobban was lodged with my office. The report referred to a routine check carried out by police on 16 July 2019 in relation to vehicle YN07 FPZ. A copy of the addendum report, together with a covering letter placing the operator on notice that I wished to consider the issues therein in terms of

S.26(1)(f) of the 1995 Act was sent to Mr Findlay in email and hard copy on 17 July 2019.

The Public Inquiry

9. Mr Findlay appeared before me at Public Inquiry on 22 July 2019. Mr Cobban, Traffic Examiner, was also in attendance. Given the deficiencies in the call up letter as regards specific statutory references, I ensured at the outset that Mr Findlay was on notice of all the issues to be addressed. I also asked Mr Findlay to confirm whether he was content to deal with the issues raised in the addendum report or whether he wished more time to prepare. Mr Findlay confirmed that he had received the documentation timeously and that he was content to deal with all of the allegations in the course of the inquiry.

Evidence

10. Mr Cobban's evidence was that he had been involved in the initial investigation of unauthorised use of vehicle YN07 FPZ by the operator. That investigation had led to the operator's application for a licence being called in to public inquiry before the Deputy Traffic Commissioner. He advised that, as part of his investigation, he had examined vehicle YN07 FPZ on 10 December 2018 and noted that the odometer reading at that date was 625126 kilometers.
11. He stated that on 23 March 2019, police officers stopped vehicle YN07 FPZ. The vehicle was laden with scaffolding. Both the driver and the passenger advised that they had been carrying out two jobs that day in the Perth area. The driver confirmed that they were employed by the operator.
12. Mr Findlay was contacted and thereafter attended to speak to the officers. He told them that his operator's licence was due to come into force on 25 March 2019 but that he had had to use the vehicle that day to carry out an emergency job to stabilise someone's chimney that was about to collapse.
13. On 25th March 2019, at around 10.30am, Mr Cobban called at the operator's operating centre to carry out a download of the digital tachograph fitted to vehicle YN07 FPZ. The vehicle was not there. Mr Cobban contacted Mr Findlay who stated that he had ripped off a mudguard and that the vehicle was in for repair. When asked where the vehicle was, Mr Findlay replied that he was up on scaffolding, was having difficulty hearing Mr Cobban, and that he would phone him back in two minutes.
14. Mr Findlay did not call back as promised. Mr Cobban called Mr Findlay again twice, at 11:03 and 11:24, but received no answer. At about 12:12 hours, Mr Findlay called Mr Cobban and advised that the vehicle was at TS Transport in Dundee for repair to the mudguard having been driven there earlier that day. Mr Cobban advised that the impression he formed from what Mr Findlay had said during their conversations, was that the vehicle had been taken there early that morning by one of his drivers.
15. When Mr Cobban finally managed to inspect the vehicle at TS Transport's premises later that day he noted that the vehicle's odometer read 635434km. The vehicle had,

therefore, been driven a total of 10308km between 10 December 2018 and 25 March 2019.

16. The data able to be downloaded from the vehicle's tachograph was, as a result of an error, restricted to the previous 28 days. It showed that the vehicle had been driven on several occasions on 25th March 2019, commencing at 07:02 and ceasing at 12:11. The vehicle had travelled a total of 239km that day. Mr Cobban calculated that between 10:49 hours, after he first spoke to Mr Findlay, and 12:11, the vehicle had been driven for a total of 1 hour 22 minutes and had covered 96.1km. Mr Cobban confirmed that the data he had downloaded from the vehicle's tachograph had not been tampered or interfered with. The tachograph data led Mr Cobban to conclude that Mr Findlay had not been truthful with him as regards the whereabouts of the vehicle on 25 March 2019.
17. The data showed that, between 26 February and 25 March 2019, the vehicle had been driven most days. His report showed that the distances driven each day differed, but on many days, distances of well over 100 or 200 kilometres had been travelled. The vehicle had been driven for a total of 3280km during that period.
18. Having regard to the odometer readings taken by Mr Cobban it followed that, in the period between 10 December 2018 and 25 February 2019, the vehicle had been driven over a distance of 7028 kilometres. Mr Cobban confirmed that the odometer on the vehicle showed no evidence of malfunction.
19. Mr Cobban spoke to the detail of his addendum report. Vehicle YN07 FPZ had been brought to Perth Goods Vehicle Test station on 16 July 2019 laden with scaffolding. The driver stated that he was travelling from Dundee to Perth to deliver scaffolding and advised that others were to unload the vehicle when he reached the job. There was no driver card inserted in vehicle's tachograph unit.
20. Mr Cobban downloaded information from the tachograph unit. It showed that there had been several periods of driving without a card inserted and a total of 98km had been travelled on 16 July 2019. Vehicle Examiner Bell also carried out a roadworthiness check of the vehicle. He issued prohibitions, amongst which was an 'S' marked prohibition relating to a tyre worn below the legal limit and another which had its tread lifting due to a failure in its structure. The vehicle had to be recovered on the basis that it was unroadworthy.
21. Mr Findlay's evidence was that AFS Scaffolding Limited was not using the vehicle for reward when it was stopped on 23 March 2019. He had agreed to erect scaffolding as a favour for someone due to an emergency in the interests of public safety. He had not invoiced for the work. Mr Findlay had not brought any evidence to the inquiry to support that contention, stating rather that the lack of an invoice was evidence in that regard.
22. When it was put to him that his employees had advised that they had carried out two jobs that day, his evidence changed. He conceded that the vehicle had attended at two jobs, but that the only reason it had done so was as a result of the emergency. Ultimately, his evidence appeared to be that he had used the vehicle to attend a paying job, to remove scaffolding from there, and take it to the emergency job he had described.

23. When asked about his interaction with Mr Cobban on 25 March 2019, Mr Findlay stated that he had, in fact, had vehicle YN07 FPZ with him when he received the first call from Mr Cobban. He was going to take it to the garage for repair but that he had a meeting to go to first. He later stated that he had used the lorry that morning to go and see his scaffolders who were working on site in Aberdeen. Mr Findlay admitted that he had not told Mr Cobban the truth, under explanation that he had panicked when he received Mr Cobban's phone call.
24. A transcript of Mr Findlay's evidence at the previous inquiry relating to the use of vehicle YN07 FPZ during the period 10 December 2018 until 25 February 2019 was put to him. He agreed that the transcript was an accurate record of what he had said. He had told the Deputy Traffic Commissioner on 25 February 2019 that vehicle YN07 FPZ had been parked up since 10 December 2018, save for a trip to his maintenance provider, where the vehicle had been left. Mr Findlay's maintenance provider, TS Transport, is situated just over five miles from his operating centre.
25. Mr Findlay was asked by me to explain how a vehicle which was parked up could also have been driven more than 7000km during the period in question. He answered that the vehicle could not have moved between 17 December 2018 and 7 January 2019 as they were all on holiday. Ultimately, he could not explain to me how the distance in question could have been travelled in the vehicle.
26. Mr Findlay accepted that he was the operator and that he was responsible for the vehicle, yet he could offer no explanation for the disparity between what he had told the Deputy Traffic Commissioner at the inquiry on 25 February 2019 and Mr Cobban's evidence regarding the distance the vehicle had been driven. I put it to him that his evidence may appear to lack credibility on this point. He accepted that but continued to maintain that he had told the truth to the Deputy Traffic Commissioner.
27. When asked about the 3028km travelled by the vehicle between 26 February and 25 March 2019, Mr Findlay advised that the distance had been driven by him using the vehicle for personal reasons. He had been helping a family member renovate a house and had not charged for the work. The vehicle had been used for trips to builders' merchants, Ikea and such like.
28. When asked how far away from the operating centre the house being renovating was, he answered that he had parked the vehicle at his home during that period. He advised that the house which was being renovated was in Carnoustie, which is 14 miles or so, from Dundee where Mr Findlay lives and the operating centre is located. Asked if his evidence was that he had been keeping the vehicle other than at the operating centre, Mr Findlay's evidence changed, stating that he had only done so sometimes.
29. I put it to Mr Findlay that the distances driven during this period may appear to be more consistent with the vehicle being used to transport goods for business purposes. Moreover, significant distances had been travelled on some days which would appear to leave little time for work over and above the assistance he was offering the family member. In response, he suggested that his haulage bills for the period showed that he had used other haulage firms during that time.
30. The invoices for external haulage used by AFS Scaffolding Limited provided by Mr Findlay after the inquiry relating to the period 26 February and 25 March 2019 appeared to show that AFS Scaffolding Limited had used other firms to provide hired

scaffolding and transport on around eight occasions. They did not show any marked increase in the use of external contractors during that time, as compared to similar invoices he had submitted for the earlier inquiry.

31. Mr Findlay's evidence in relation to the stop of his vehicle on 16 July 2019 was that the driver wasn't employed by him as a driver. He was employed as a labourer and he had been on his way to erect scaffolding himself at a job. The driver had 'just panicked' and said the wrong thing when he advised that someone else was to unload the scaffolding when he got to the job.
32. He submitted that because the driver was taking scaffolding to a job and personally erecting it he was exempt from using a tachograph and the requirement to have driver CPC. He also stated that because the job in question was within a 100km radius of the operating centre, it was also exempt on that basis. He admitted nevertheless, that he was not entirely clear when a tachograph should be used in the vehicle and advised that he had now ordered drivers cards for his drivers.
33. Mr Findlay advised that he 'held his hands up' in relation to the 'S' marked prohibition which vehicle YN07 FPZ had attracted that day. He had done the walkround check of the vehicle himself that morning and he didn't know how he had managed to miss the damaged tyres. When it was put to him that an 'S' marked prohibition was indicative of significant failings in his maintenance regime, he told me that he intended to take the issue up with his maintenance provider.
34. Mr Findlay told me that the other people he employs to drive the lorry do not know how to do walkround checks. He advised that he does the checks himself, every morning, at 6am. He produced a folder which contained a variety of documents relating to vehicle, including details of some maintenance inspections which had been carried out by his provider, a small number of driver defect reports, and MOT and insurance documents.
35. He also produced a paper diary which he referred to as his forward planner. The diary contained no entries prior to 26 March 2019. It was annotated at 29 March 2019 with the words 'licence active' indicating that Mr Findlay was clearly aware, at the time when he filled the diary in, that his licence didn't come into force until that date. Mr Findlay confirmed that he always been aware that his licence didn't come into force until 29 March 2019. The diary entries postdating 29 March showed that the vehicle was in use on jobs most days.
36. Mr Findlay accepted that he should, as a director of the operator company, have specified vehicle YN07 FPZ on his licence within one month as required by law under explanation that he used a company to complete the application for him and they did not tell him to do it. He similarly accepted that he should have notified my office in relation to the resignation of Mrs Shewan. He conceded that he had not complied with the undertakings on his licence in this regard.
37. Mr Findlay stated that he had made some genuine mistakes. The operator had been in business for about 18 months and he explained that he does everything in the business: he drives the lorry, estimates jobs, erects scaffolding, is the yard foreman, the supervisor and is responsible for health and safety and so on. He was very busy. He had a lot of bigger jobs, for which he used external haulage contractors.

38. He conceded that he had not known much about operator licensing at first but advised that he had now done some training. He intended to attend a new operator seminar and was in the process of joining the FTA. Mr Findlay also asked me to note that, when vehicle YN07 FPZ was stopped on 16 July 2019, no problems were found with the way the vehicle was loaded. Everything had been done properly. Mr Cobban confirmed that he had no concerns in that regard.
39. When asked about the effect that regulatory action would have, Mr Findlay stated that revocation of his licence would be likely to finish his business. Haulage costs were high. He admitted that a significant proportion of his work was still larger projects which meant he had to rely on external haulage, but he was trying to phase that out. There was more profit in the small jobs. He told me he had investment from the bank and the company was getting stronger, but that revocation would be the death of his company.
40. He stated that he would be 'happy' with a suspension in the circumstances and would happily hand over his lorry to DVSA for a period in order that he would not be 'tempted to use it'.
41. When asked about the impact of disqualification on him and his company from holding an operator's licence, he advised that that would have the same effect as revocation. He would have to let his staff go and go back on the tools himself. He may need to look to a career change.
42. After the inquiry, on 23 July 2019, Mr Findlay submitted bank statements covering the period 29 March to 1 July 2019. The statements showed that AFS Scaffolding Limited met financial standing when calculated over a three month period.
43. **[REDACTED]**

Findings

44. I found the following facts to be admitted or proved:
- a) Mr Findlay is the sole director of the operator;
 - b) The operator holds a restricted operator's licence for one vehicle;
 - c) The licence came into force on 29 March 2019;
 - d) The operator was called to public inquiry on 25 February 2019 in connection with its application for an operator's licence;
 - e) The operator was found at the inquiry on 25 February 2019 to have operated vehicle YN07 FPZ without an operator's licence;
 - f) Mr Findlay's evidence at the inquiry on 25 February 2019 was that vehicle YN07 FPZ had been parked up since 10 December 2019;

- g) Vehicle YN07 FPZ was driven over a distance of 7028km between 10 December 2018 and 25 February 2019;
- h) Mr Findlay deliberately misled the Deputy Traffic Commissioner in relation to use of vehicle YN07 FPZ in the period 10 December 2018 and 25 February 2019;
- i) Vehicle YN07 FPZ was driven for a total of 10308km during the period 10 December 2018 and 25 March 2019;
- j) Vehicle YN07 FPZ was used by the operator for the carriage of goods in the course of its business without an operator's licence throughout the period 10 December 2018 until 25 March 2019;
- k) Mr Findlay misled Traffic Examiner Cobban in relation to the whereabouts of vehicle YN07 FPZ on 25 March 2019. In so doing, Mr Findlay deliberately obstructed an enforcement investigation;
- l) The failure to carry out proper walkround checks and the 'S' marking of one of the prohibitions imposed on vehicle YN07 FPZ on 16 July 2019 is evidence of a significant failure in the maintenance systems and checks undertaken by the operator;
- m) Mr Findlay was not sufficiently familiar with the rules in relation to driving goods vehicles and the use of tachograph equipment;
- n) The operator failed to specify vehicle YN07 FPZ in accordance with the requirements of its operator's licence;
- o) The operator failed to notify the resignation of Mrs Alison Margaret Shewan as a director of the operator in accordance with the undertakings on the company's operator's licence.

Consideration of the evidence

45. Mr Findlay admitted that he misled Traffic Examiner Cobban as to the whereabouts of vehicle YN07 FPZ on 25 March 2019. That admission, coupled with the inherent improbability and inconsistency of much of what he said during the inquiry, led me to conclude that I was unable to rely on his evidence.
46. Contrary to what he had told Mr Cobban, Mr Findlay had the vehicle with him on 25 March 2019. His evidence at inquiry was that he had travelled to see his scaffolders working on a job in Aberdeen. The information downloaded from the vehicle's tachograph unit showed that the vehicle had been driven for over 239km that day, a significant portion of that being after Mr Findlay had led Mr Cobban to believe that the vehicle was at his maintenance provider for repair. I concluded that the only plausible explanation for Mr Findlay's deception was that he was attempting to hide the fact that he was using the vehicle unlawfully.
47. Accordingly, on balance I concluded that Mr Findlay was using vehicle YN07 FPZ on 25 March 2019 in connection with the operator's business to transport goods, most

likely to a job on which his firm were working, in Aberdeen. Had he not been, there would have been no need to panic, as he suggested he did, or to mislead Mr Cobban about the whereabouts of the vehicle.

48. Of significant concern, was Mr Findlay's inability to provide any explanation as to how vehicle YN07 FPZ had been driven for 7028km between 10 December 2018 and 25 February 2019. It is simply not credible that Mr Findlay, in his role as director, would be unable to account for such a significant distance being travelled in his vehicle. In the absence of any explanation to the contrary, and having regard to the distance the vehicle had been driven, I concluded that the vehicle was also used to transport goods in the course of the operator's business between 10 December 2018 and 25 February 2019.
49. Mr Findlay's evidence before the Deputy Traffic Commissioner at the inquiry on 25 February 2019 was that the vehicle had been parked up since 10 December 2018. Having regard to the odometer readings taken by Mr Cobban, that was patently untrue. I concluded, therefore, that Mr Findlay had deliberately misled the Deputy Traffic Commissioner at inquiry in order to persuade him to grant his operator's licence.
50. Similarly, I do not accept Mr Findlay's evidence that he had used vehicle YN07 FPZ in the period 25 February to 25 March 2019 for personal purposes. The vehicle had been in use on most days during that period being driven varying, and sometimes significant, distances. This did not accord with Mr Findlay's explanation that he had been helping a relative to renovate a house only a short distance away from his house and operating centre.
51. Moreover, during that period, on 23 March 2019, the vehicle was stopped and found to be laden with scaffolding. Mr Findlay's explanation with regard to the work being undertaken did not excuse the use of the vehicle, without a licence, to carry scaffolding that day in connection with the operator's business. On any interpretation of his evidence, the vehicle had been used to attend a 'paying' job that day, to remove scaffolding from the site.
52. Ultimately, I concluded that vehicle YN07FPZ had, throughout the period 10 December 2018 until 25 March 2019, been used to transport goods in the course of the operator's business. The operator did not have an operator's licence during that period. Mr Findlay knew that he needed a licence to operate, and also that the licence granted by the Deputy Traffic Commissioner did not come into force until 29 March 2019. He therefore deliberately and repeatedly operated the vehicle without a licence. Unlawful operation for such a lengthy period undoubtedly resulted in this operator gaining a competitive advantage over other operators.
53. In addition, on the basis of the evidence and the documents provided, there was little to demonstrate that the operator had an effective regime in place to check for vehicle defects. I was told that those employed to drive the vehicle did not know how to undertake walkround checks. Mr Findlay advised that he carried out the walkround check at 6am every morning. Given the importance of walkround checks, and the ability of those driving vehicles to spot and notify defects, it is wholly unacceptable that those employed by the operator to drive the vehicle were unable to carry out this task. Moreover, I did not believe, particularly having regard to the evidence of his many roles within the business, that Mr Findlay carried out meaningful walkround checks every day.

54. The issuing of an 'S' mark prohibition on 16 July 2019 also indicated that an effective system of vehicle checks was not in place. The defects in question were serious and should have been obvious had a proper inspection taken place. Standing the foregoing, I have concluded that this operator poses a significant risk to road safety.
55. I also had concerns that Mr Findlay did not properly understand his obligations in relation to compliance with the laws on driving. There was evidence of his employees driving the vehicle without the proper entitlement and without a driver's card inserted. Whilst I considered there to be insufficient evidence, having regard to the exemptions which may have applied, to allow me to conclude that infringements of the laws on driving had actually taken place, Mr Findlay did appear confused in relation to his obligations. He was unable to give clear evidence demonstrating his understanding of, or compliance with, the rules that applied.
56. Mr Findlay admitted that he failed to notify the resignation of Mrs Shewan as director within the required 28 day period and that he had not complied with his obligation to specify vehicle YN07 FPZ on the operator's licence within one month. He continued, therefore, to operate his vehicle unlawfully even after his licence came into force.
57. Standing all of the foregoing, the allegations in terms of S.26(1)(c)(iii), (e), (f) and (h) of the Act are made out.

Balancing Exercise

58. There were few positives in this case. Nevertheless, I was able to give some credit to Mr Findlay for his frankness in relation to the 'S' mark prohibition and his failure to comply with the other undertakings on his licence. I noted his apparent attention to detail, as confirmed by Mr Cobban, in relation to the loading of his vehicle. I accepted his evidence that he was very busy, and that the burden of most duties within the business fell to him. I noted that he intended to book himself onto a new operator course, join the FTA, and that he done some training already, albeit unspecified.
59. I also accepted that, if his business were to fail, financial hardship for Mr Findlay and his family would likely result. However, Mr Findlay's evidence was that he still had a significant amount of bigger jobs for which he did not use his vehicle. His company appeared to have been able to operate, for at least some time between its inception in October 2017 and March 2019, without the benefit of an operator's licence. I was unable to conclude on balance therefore, that the loss of the operator's licence would necessarily mean that the business would fail.
60. This case involves a restricted licence where the continuing requirement on behalf of the operator is 'not to be unfit'. However, having regard to the decision of the Transport Tribunal in 2013/07 Redsky Wholesalers Limited I considered the question posed in 2009/225 Priority Freight to be relevant in assessing fitness. I asked myself therefore, how likely is it that this operator will, in future, operate in compliance with the operator licensing regime?
61. I considered that Mr Findlay's willingness to deceive, coupled with his deliberate and repeated unlawful use of vehicle YN07 FPZ, demonstrated a flagrant disregard for the operator licensing regime on his part. Such behaviour led me to conclude that I

was unable to trust Mr Findlay, or this operator, in the future. In 2006/277 Michael James Fenlon t/a County Skips the Tribunal said:

'It has been said on many occasions that trust is one of the foundation stones of operator licensing. Traffic Commissioners must be able to trust operators to comply with all the relevant laws, rules and regulations because it would be a physical and financial impossibility to police every aspect of the licensing system all day and every day. In addition, operators must be able to trust other operators to observe the relevant laws, rules and regulations. If trust between operators breaks down and some operators believe that others are obtaining an unfair commercial advantage by ignoring laws, rules or regulations then standards will inevitably slip and the public will suffer.'

Given the importance of trust to the licensing regime, when I balance the seriousness of Mr Findlay's behaviour against the positives I have identified, I concluded that this operator's licence could not survive.

62. I was not persuaded that the operator's business would necessarily fail if its operator's licence was lost. If I am wrong in that, then the question posed in T/2002/217 Bryan Haulage (No.2) becomes relevant: "Is the conduct of this operator such that it ought to be put out of the business?" In the circumstances of this case, it is appropriate and proportionate to answer that question in the affirmative. I have concluded that this operator, by dint of his actions, gained a competitive advantage over other operators and the failures identified in his maintenance and inspection regime posed a significant threat to road safety.

63. I had regard to the Senior Traffic Commissioner's Statutory Document No. 10: Principles of Decision Making, in particular, Annex 3. This case was one where the operator had obtained a clear commercial advantage over other operators by unlawfully operating his vehicle. Mr Findlay had also attempted to conceal that unlawful operation. The starting point for regulatory action was therefore severe. Moreover, I take the view that other operators who carry out their businesses in a compliant manner would be shocked if another operator were permitted to operate a vehicle against this background. I therefore revoke this operator's licence with immediate effect.

64. In considering whether disqualification should follow revocation, I again had regard to Senior Traffic Commissioner's Statutory Document No. 10: Principles of Decision Making. I reminded myself of the authority in T/2010/29 David Finch Haulage. In that case, the Transport Tribunal said:

"The imposition of a period of disqualification following revocation is not a step to be taken routinely, but nor is it a step to be shirked if the circumstances render disqualification necessary in pursuit of the objectives of the operator licensing system. Although no additional feature is required over and above the grounds leading up to revocation, an operator is entitled to know why the circumstances of the case are such as to make a period of disqualification necessary..."

65. The Senior Traffic Commissioner's guidance states that serious cases may merit disqualification of between five and ten years. For a first public inquiry, the starting point suggested is between one and three years. This operator has attended two public inquiries. The issues under consideration were the same at both inquiries and, during the first, Mr Findlay deliberately misled the Deputy Traffic Commissioner.

66. This is a particularly serious case, involving breaches of trust which go to the heart of the licencing regime. Road safety has been compromised and the operator has gained a significant commercial advantage over other operators by virtue of its actions. In the circumstances I consider it appropriate to disqualify the operator, and Mr Findlay, from holding an operator licence for a period of five years. For the same reasons, I consider that S.28(4) should apply in this case and I direct accordingly.

Claire M Gilmore
Traffic Commissioner for Scotland

3 September 2019