



**DECISIONS OF A DEPUTY TRAFFIC COMMISSIONER SITTING IN THE WELSH
TRAFFIC AREA IN CARDIFF**

**Ronald James Mainwaring & Michael James Mainwaring t/a Mainwaring Buses
PG1082065
&
Transport Manager – Michael James Mainwaring
&
Driver – Michael James Mainwaring**

The Public Passengers (Vehicles) Act 1981 as amended (“the Act”)

**Decisions made in respect of the PSV operator’s licence held by Ronald James
Mainwaring & Michael James Mainwaring t/a Mainwaring Buses PG1082065**

- 1. Adverse findings are made under sections 17(3)(a); 17(3)(aa); 17(3)(b); and 17(3)(c) of the Act.**
- 2. The operator meets the requirement for financial standing at the date of the adjourned public inquiry.**
- 3. The operator no longer meets the requirement for professional competence, section 17(1)(a) and 14ZA(2) of the 1981 Act.**
- 4. The operator no longer meets the requirement to be of good repute, section 17(1)(a) and 14ZA(2) of the 1981 Act.**

5. The operator's licence is revoked with effect from 23.59 hours on 28 February 2020.

6. Michael James Mainwaring is disqualified from holding or applying for an operator's licence in any traffic area for a period of 12 months after the date of revocation of this licence. The disqualification applies to his being an operator, director or having a controlling interest in a passenger transport business.

Decisions made in respect of Transport Manager Michael James Mainwaring

7. Michael James Mainwaring loses his repute as a transport manager, he is disqualified from being a transport manager for a period of two years from the date of revocation of this licence.

Decisions made under the Road Traffic Act 1988 in respect of driver Michael James Mainwaring

8. Michael James Mainwaring is unfit to hold a vocational licence and it is suspended from 21st February 2020 until 21st June 2020.

Background

9. An operator's licence was granted to father Ronald James Mainwaring ("Ronald Mainwaring") and son Michael James Mainwaring ("Michael Mainwaring") in 2008. At the time of the latest hearings there were four discs authorised for the business which was based in Porth, South Wales.

10. In September 2017 the partnership appeared before me when it's repute remained intact, albeit tarnished. Father, Ronald Mainwaring was transport manager at that time and lost his repute as a transport manager, a period of grace was given to address the lack of professional competence. I indicated that Michael Mainwaring would be accepted as transport manager after attending a specialist refresher course. Various undertakings were also added to the licence.

11. The latest public inquiry followed a DVSA investigation into both condition of vehicles and breaches of drivers' hours rules.

First listing of public inquiry on 4 December 2019

12. The following attended the first hearing date:

- Ronald Mainwaring, partner
- Michael Mainwaring, called as partner, transport manager and driver
- Marc Darren Walker, driver
- VE Stephen Cooke
- TE Alex Bell

13. Another driver was called but failed to attend, decisions were made to prevent his driving a PSV for a substantial period of time.

14. It was evident at the first listing that Michael Mainwaring in particular was an individual who was suffering stress, this supported by a note from his doctor. At the hearing he repeatedly told me he had “lost it”, referring to his state of mind and judgement. I learned that Michael Mainwaring together with other drivers faced very serious criminal charges at a forthcoming hearing. There was no legal representation and whilst I gleaned that much of the DVSA evidence might be accepted, Michael Mainwaring in particular would benefit from legal representation. I was also conscious of the need to avoid conducting a public inquiry which might prejudice the criminal proceedings. Reluctantly, I agreed to adjourn to a date very soon after the due court date.

15. An issue which was evident at the initial hearing related to financial standing, details provided did not meet the requirements of legislation and the Senior Traffic Commissioner’s statutory guidance. As a result, I obtained an undertaking with specific details to ensure that financial standing would be met as soon as possible. Additionally, I produced a brief written note setting out that a period of grace was granted for a limited period until 18 December 2019, this predated the criminal court hearing. It was made clear that the licence would be revoked on 19 December 2019 without any prior notice and without further public inquiry if finances were not addressed as I required. Financial standing was addressed as set out by me on 4 December 2019; for completeness I confirm that financial standing continued to be met at the subsequent hearing on 28 January 2020.

Attendance at the conjoined public inquiry and driver conduct hearing on 28 January 2020

16. The following were in attendance on 28 January 2020.

- Ronald Mainwaring, partner
- Michael Mainwaring, partner, transport manager and driver
- Owen Roberts, proposed transport manager in the event of the licence continuing
- Philip Brown, solicitor of PJE solicitors
- VE Stephen Cooke
- TE Alex Bell

17. Driver, Marc Darren Walker did not attend the latest hearing due to his falling ill. He gave some evidence to me at the first hearing, corroborating information provided by the DVSA. He attended before me on a later date when his vocational entitlement was suspended.

18. After hearing all the evidence including written and oral representations I indicated my proposed decisions, instructions were taken and initially it was suggested that I could make and announce decisions without a formal written decision. Initially this appeared to be agreed, however after adjournments for instructions it was apparent that Michael Mainwaring required that I produce any decision affecting him in writing.

19. Mindful of difficulties for local authorities when a PSV licence is revoked, I indicated at the hearing that revocation would likely commence at the

commencement of the local half term on 14 February 2020; in the event the need for me to both obtain and read a transcript has necessitated my delaying the commencement of the revocation date and the date of vocational licence suspension.

Evidence

20. Before preparing this written decision I have reviewed the following:-

- Public inquiry brief for the operator Ronald James Mainwaring & Michael James Mainwaring t/a Ron Mainwaring Buses;
- Public inquiry brief for transport manager Michael Mainwaring;
- Call in papers for the vocational driving licence held by Michael Mainwaring;
- My notes of the hearings on 4 December 2019; and, 28 January 2020;
- Transcripts of the hearings on both of the above dates;
- Written representations and evidence presented on behalf of the operator and transport manager, driver; and,
- Various authorities including those in relation to the approach to regulation, repute, proportionality, and trust:- Thomas Muir (Haulage) Limited v Secretary of State for the Environment, Transport and Regions (1999) SLT 666; Crompton trading as David Crompton Haulage v Department of Transport, North Western Area (2003) (EWCA Civ 64); Muck It Limited and others v Secretary of State for Transport (2005) EWCA Civ 1124; 2009/225 Priority Freight Limited and Paul Williams; 2002/217 Bryan Haulage (No 2); and, Fenlon 2006/277.

21. I am conscious that I am a civil jurisdiction and need to take care when making adverse findings of fact. I have had regard to the decision of the House of Lords which reminds civil jurisdictions that, whilst the standard of proof in civil proceedings is always on the balance of probabilities, the more serious an issue or allegation the more cogent the evidence that is required, In Re H and Others 1996 1 All ER. The evidence in this case is both clear and cogent.

Convictions

22. it was confirmed by both examiners and Mr Brown who was representing the operator that some of the allegations relating to falsification were withdrawn, with guilty pleas to the remaining ones. There was a basis of plea for one of the falsification offences with mitigation put forward, however I was told that Michael Mainwaring “*had lost it*” and didn’t know what he was doing. A transcript of the hearing in December 2019 had been provided for the operator, it included references to Michael Mainwaring advising me on several occasions that “*he had lost it*”, referring to his mental state and judgement.

23. Michael Mainwaring pleaded guilty to 32 offences in total was fined £100 in respect of the following 20 offences where he had pleaded guilty:

- 22 March 2019 - failing to make a record
- 23 March 2019 - failing to make a record
- 25 March 2019 - failing to make a record
- 26 March 2019 - failing to make a record
- 26 March 2019 - making a false record
- 7 April 2019 - making a false record

- 11 April 2019 - making a false record
- 18 April 2019 - failing to record other work
- 18 April 2019 - failing to use tachograph driver card
- 22 April 2019 - failing to record other work
- 22 April 2019 - failing to use tachograph driver card
- 3 May 2019 - failing to make a record
- 3/4 May 2019 - failing to have a daily rest period
- 3/4 May 2019 - exceeding daily rest period
- 3/4 May 2019 - failing to use tachograph driver card
- 4 May 2019 - failing to use tachograph driver card
- 7 May 2019 -failing to use tachograph driver card
- 11 May 2019 -failing to use tachograph driver card
- 12 May 2019 -failing to make a record
- 12/13 May 2019-failing to have a daily rest period

24. Orders of no separate penalty were made in respect of the following 12 offences:

- 26 March 2019 - failing to take a break after 4.5 hours driving
- 26 March 2019 - exceeding 10 hours driving time
- 29 March 2019 - failing to take a break after 4.5 hours driving
- 6/7 April 2019 - failing to have a daily rest period
- 6/7 April 2019 - exceeding 10 hours driving time
- 7 April 2019 - failing to take a break after 4.5 hours driving
- 10 April 2019 - failing to take a break after 4.5 hours driving
- 10/11 April 2019 - failing to have a daily rest period
- 10/11 April 2019 - exceeding 10 hours driving time
- 18/19 April 2019 - failing to have a daily rest period
- 12/13 May 2019 - exceeding 10 hours driving time
- 12/13 May 2019 - failing to take a break after 4.5 hours driving

25. A number of the above offences related to Michael Mainwaring's role as a driver whilst other prosecutions against him were in his capacity as an operator in respect of offences committed by another driver. The falsification convictions listed above relate to falsifications by Michael Mainwaring. The total sum of fines costs and victim surcharge amounted to £3,780.

Evidence of VE Stephen Cooke

26. VE Stephen Cooke produced a full public inquiry statement which was adopted as evidence, the contents of his evidence was accepted in full by those present.

27. VE Cooke summarised his concerns indicating that the operator had a 75% prohibition rate. Two vehicles in use were inspected at different school checks on the same day without notice, both received immediate prohibitions. One of the prohibitions related to a parking brake performance, the examiner pointed out that having now seen both the previous inspection record and noted that the PMI was overdue by two weeks, that prohibition could now be deemed as a significant failure of maintenance.

28. VE Cooke also pointed out that a consultant employed by the operator had conducted audits on maintenance procedures every two months. The audit report listed items requiring immediate attention including intervals between inspections being too large; additionally no brake tests were recorded and declarations were not signed. The examiner was concerned that the same deficiencies were evident in his latest maintenance investigation.

29. A number of errors were noted on the operator's wall planner.

30. It was also pointed out by the examiner that at a previous public enquiry before me in September 2017 there was a specific undertaking that PMI is would be no longer than four weekly, but this was not adhered to. Additionally, there was reference the fact that failings identified at that previous public inquiry were still evident.

Evidence of TE Alex Bell

31. TE Alex Bell produced a full public inquiry statement which was adopted as evidence, the factual contents of his evidence were accepted in full by those present.

32. It was clear from both the written and oral evidence from TE Alex Bell that he felt that Michael Mainwaring had been uncooperative and was deliberately difficult when dealing with him. Factual issues were not in dispute and there was an acknowledgement from Michael Mainwaring that "he had lost it", this assists in my confirming that objectively Michael Mainwaring was uncooperative, albeit in part this arose from a time when he was not in a fit mental state to undertake the role of operator and transport manager.

33. One driver had committed offences as a result of the lack of control by Michael Mainwaring, he was convicted of 11 separate offences on 27 November 2019 but failed to attend before me as required, hence an order taking his vocational entitlements from him.

34. Marc Darren Walker, the driver who attended before me at the first hearing, described himself to TE Alex Bell as Operations Manager, it was clear to the examiner that he was in control of the forward planning systems. On several occasions driver Marc Darren Walker emailed the examiner throughout May, June and July providing requested information. An issue of concern to TE Alex Bell was that the designated transport manager, Michael Mainwaring, was not performing that role; instead Marc Darren Walker completed the expected transport manager tasks. The examiner also commented that Michael Mainwaring showed no aptitude or ability in the role of transport manager.

35. None of the contents of the examiners' public inquiry statements were disputed, TE Alex Bell perceived Michael Mainwaring as being difficult and arrogant when meeting with him on 10 July 2019, he perceived his behaviour as a deliberate attempt to disrupt. Evidence from TE Alex Bell describes Michael Mainwaring challenging wording used by the examiner to the extent that he perceived that it was an attempt to belittle him and avoid answering questions.

36. Marc Darren Walker was described as being very helpful throughout the investigation and was described as appearing to be genuinely fearful that by telling the truth he would lose his employment. On the first listing of this case when Marc Darren Walker attended, he confirmed the accuracy of the evidence relating to him in my brief. This describes Marc Darren Walker as intentionally doctoring timesheets covering the period 6 April to 11 April 2019 to give the impression that he had attended a trip to Amsterdam. He claimed that he was coerced into doing so by Michael Mainwaring. This was conceded as accurate by Michael Mainwaring at the hearing before me.

Other evidence

37. Note, as factual matters were not disputed, I have not gone into any great detail in describing them, in the event of an appeal they are clear to see. It was conceded by an experienced transport solicitor on behalf of the operator and transport manager that revocation and personal disqualification were likely outcomes.

38. The transcript confirms the details of the Amsterdam trip involving Michael Mainwaring's falsification. It is noteworthy that ANPR camera clearly showed Michael Mainwaring driving and the thoroughness of DVSA investigators contributed to the inevitable acceptance of the falsifications.

39. Interviews with Marc Darren Walker reveal his suggested explanations for offences committed by the operator, namely financial difficulties with references to difficulty in the business paying bills. This was corroborated by comments from Michael Mainwaring to TE Alex Bell that he wanted legal advice but could not afford to pay for it. There was yet further corroboration when correspondence from the operator to me revealed concern that it could not afford a lawyer to represent it at the public inquiry before me in December 2019. Financial standing produced at that time fell woefully short of the required sum, moreover finances were not as set out in the statutory guidance issued by the Senior Traffic Commissioner. It was because of my concerns as to the financial viability of the business that I made decisions on 4 December 2019 that would have closed the business on 19 December 2019 if satisfactory finances were not produced in advance of that date (I gave a very short period of grace). It is evident that the family used finances from other sources to address my concerns of 4 December 2019, these additional finances were still in place at the time of the adjourned hearing on 28 January 2020.

40. Both the vehicle examiner and the traffic examiner were asked about records produced for the hearing, it was evident that there were improvements since the investigation, I pointed out that I would take this into account. It transpired that the tachograph analysis company that Michael Mainwaring was expecting to continue undertaking that role was not going to do this in the future. TE Bell had telephoned the analysis company before the start of the second hearing and relayed this news to Michael Mainwaring. Whilst the operator could use another company, the evidence revealed a less than fulsome relationship between the operator and its tachograph analyst. I place comparatively little weight on this last point.

Findings and material considerations.

41. Evidence from the DVSA (save for where some specific criminal charges were withdrawn) was not disputed by the operator or Michael Mainwaring, accordingly I adopt the DVSA evidence as correct. I also give some credit to the operator and to Michael Mainwaring for his accepting the evidence when he was before me, whilst the strength of the evidence was overwhelming, it is proportionate that I reduce any period of disqualification and suspension to reflect this.

42. I have also taken into account in my balancing exercise the fact that there was some evidence of improvement of vehicle safety – and additionally – there were no ongoing concerns over drivers’ hours falsifications.

43. I accept that to use the words of Michael Mainwaring and his solicitor “he just lost it” and this was a manifestation of an individual who made very bad errors of judgement. Michael Mainwaring had the technical transport manager qualifications when he took over from his father, but he did not and does not have management skills.

44. The evidence of DVSA examiners was of Michael Mainwaring appearing to them to be difficult and uncooperative. I don’t disagree but feel that primarily this was a manifestation of an individual who was unable to cope with real responsibility and reacted by challenge when confronted with wrongdoing.

45. Whether the operator was in great financial difficulty or not, it let its employees think that it was in trouble. One of the partners actively encouraged and endorsed falsifications and failures to comply with drivers’ hours regulation. The fact that the partner was also transport manager is an aggravating feature.

46. I accept the suggestion from the DVSA that Michael Mainwaring was not performing the functions of a transport manager and note that instead Marc Darren Walker took on a role that was nearest to one of continuous and effective management of transport.

47. At an earlier hearing Ronald Mainwaring lost his repute as a transport manager and it was clear to me in this latest case that he had a passive role in the management of the business. On his addressing me he conceded that he hadn’t managed the business for a few years and that if it continued, he would need to get back into a management role.

48. The single most serious and significant feature of this case is that an individual who was a partner, transport manager and driver actively encouraged and coerced falsifications, this in addition to falsifying records himself.

49. The importance of complying with drivers’ hours rules was spelt out in 2010/063 Cornelius Pryde Hart where it was said: “*The function of the Traffic Commissioner is not to punish again, but to regulate an industry in which the public entrust their safety and that of their children. Tired drivers are as great a menace on the roads as drunk drivers, and potentially tired drivers who then cover up their illegal activities by dishonestly making false records have absolutely no place in the public passenger-carrying industries.*”

50. I ask myself if I can trust this operator and answer in the negative. I remind myself of the case of 2006/277 Fenlon where it was 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.”*

51. In determining the outcome of this case I have also had regard to a Stay decision in Highland Car Crushers Ltd where it was said: *“Other operators, with knowledge of the case, might be tempted to look at the circumstances and say to themselves this operator appears to be getting away with it so why should we bother to incur the expenditure of time, trouble and money to run a compliant operation? It only needs one or two operators to adopt this approach to lead to a greater risk that the operator licensing system, which contributes to road safety, will be fatally undermined”.*

52. In the case of 2007/459 KDL European Ltd the court said *“we are satisfied of the need “to make an example of the operator so as to send a warning to the industry as a whole”. This is consistent with the approach by the five-judge Court of Session in the Thomas Muir case (see paragraph 2(xiii) above) where deterrence is expressly mentioned (“in particular for the purpose of deterring the operator or other persons from failing to carry out their responsibilities under the legislation”). This is not by way of punishment per se but, as Lord Cullen said, is “in order to assist in the achievement of the purpose of the legislation”. We answer the question posed in 2002/17 Bryan Haulage (No.2) “is the conduct such that the operator ought to be put out of business” in the affirmative. And we judge this at the date not only of the public inquiry but also of the appeal. This is a bad case and we hope that the message sent out will be clear to all.*

53. Considering the future of this operator’s licence, I need to ask myself what is known as the Priority Freight question. The court in 2009/225 Priority Freight said *“In our view before answering the ‘Bryan Haulage question’ it will often be helpful to pose a preliminary question, namely: how likely is it that this operator will, in future, operate in compliance with the operator’s licensing regime? If the evidence demonstrates that it is unlikely then that will, of course, tend to support a conclusion that the operator ought to be put out of business. If the evidence demonstrates that the operator is very likely to be compliant in the future then that conclusion may indicate that it is not a case where the operator ought to be put out of business. We recognise, of course, that promises are easily made, perhaps all the more so in response to the pressures of a Public Inquiry. What matters is whether those promises will be kept. In the present case the Appellant company was entitled to rely on that old saying that ‘actions speak louder than words’.*

54. I answer the Priority Freight question in the negative, I do not trust this operator to get things right.

55. I go on consider the Bryan Haulage question. Here the court in 2002/217 Bryan Haulage (no. 2) said: *"In applying the Crompton case it seems to us that traffic commissioners and the Tribunal have to reconsider their approach. In cases involving mandatory revocation it has been common for findings to have been made along the lines of "I find your conduct to be so serious that I have had to conclude that you have lost your repute: accordingly, I have also to revoke your licence because the statute gives me no discretion". The effect of the Court of Appeal's judgment is that this two-stage approach is incorrect and that the sanction has to be considered at the earlier stage. Thus, the question is not whether the conduct is so serious as to amount to a loss of repute but whether it is so serious as to require revocation. Put simply, the question becomes "is the conduct such that the operator ought to be put out of business?"*

56. I answer the question whether the conduct was such that the operator ought to be put out of business in the affirmative.

57. In view of my answers to the two questions above, I go on to revoke the operator's licence for the partnership.

58. Michael Mainwaring had the principal role in the falsifications and it is his lack of skills that has led to the demise of the business. On discussing potential disqualifications under section 28 of the Transport Act 1985 at the hearing, it was conceded by Michael Mainwaring that he needed to spend some time out of the industry. However it is equally clear from the transcript that whilst notionally telling me that he accepted the inevitability of disqualification, his demeanour demonstrated what amounted to a difficulty in letting go. If a licence was granted for his father, Michael Mainwaring would get involved if possible, unless prevented by me. Discussions on future vehicle purchases confirmed to me that I needed to make an order of disqualification, both in the interests of the industry and for the sake of Michael Mainwaring. He admitted he needs a period of time out of the industry.

59. Statutory document number 10 on The Principles of Decision Making & The Concept of Proportionality has helpful guidance on personal disqualifications, in particular I note paragraph 100. The section 28 disqualification of 12 months is very modest and is significantly less than what it would otherwise be in recognition of the fact that Michael Mainwaring's behaviour was so obviously affected by his mental state. Whilst I am no medical expert, any objective observer would suggest that he was suffering a mental illness. On reading the transcript I reflected that despite the mitigation of mental illness, perhaps I was too lenient with only 12 months disqualification. However, I gave a clear impression to Michael Mainwaring that he would receive a 12 month disqualification under section 28 of the Transport Act 1985 and reluctantly I must concede that I should not now increase its length. Michael Mainwaring commits an offence if he applies or holds an operator's licence during the period of disqualification, however the end of the disqualification period does not mean that he will immediately be entitled to have an operator's licence, the onus would be on him to satisfy a traffic commissioner as to his good repute

60. Turning to Michael Mainwaring's position as transport manager, similar mitigation in relation to mental illness applies. Here discussions during the hearing confirmed his acceptance that he needed to avoid any transport manager position for

a longer period of time. The behaviour leading to the revocation of the operator's licence supports my finding that Michael Mainwaring loses his repute as a transport manager. I have to disqualify him from holding or applying for a transport manager position for a specific period or until an act has happened. Here I make an order of disqualification of two years from the date of licence revocation, however I remind Michael Mainwaring that he would at that stage still need to satisfy a traffic commissioner that he could effectively and efficiently manage transport.

Specific Considerations in relation to Michael James Mainwaring's vocational driving licence.

61. The legislation in relation to driver conduct is not the same as that applicable to operators of heavy goods vehicles.

62. Section 115 (1) of the Road Traffic Act 1988 ("the 1988 Act") provides that a large goods vehicle or passenger-carrying vehicle driver's licence - (a) must be revoked if there comes into existence, in relation to its holder, such circumstances relating to his conduct as may be prescribed; (b) must be revoked or suspended if his conduct is such to make him unfit to hold such a licence; and where the licence is suspended under paragraph (b) above it shall during the time of the suspension be of no effect.

63. Section 116 (1) of the 1988 Act provides that any question arising under section 115 (1) (b) of this Act as to whether a person is or is not, by reason of his conduct, fit to hold a large goods vehicle or passenger carrying vehicle driver's licence, as the case may be, may be referred by the Secretary of State to the traffic commissioner for the area in which the holder of the licence resides.

64. Section 116 (2) of the 1988 Act provides that where on any reference under subsection (1) above, the traffic commissioner determines that the holder of the licence is not fit to hold a large goods vehicle or passenger carrying vehicle driver's licence, as the case may be, he shall also determine whether the conduct of the holder of the licence is such as to require revocation of his licence or only its suspension; and if the former, whether the holder of the licence should be disqualified under section 117 (2) (a) of this Act (and, if so, for what period) or under Section 117 (2) (b) of this Act.

65. Section 121 of the 1988 Act defines conduct as meaning (a) in relation to the applicant for or the holder of a large goods vehicle driver's licence, his conduct as a driver of a motor vehicle, and in (b) in relation to an applicant for or the holder of a passenger – carrying vehicle driver's licence, his conduct both as a driver of a motor vehicle and in any other respect relevant to his holding a passenger – carrying vehicle driver's licence.

66. In making my decision in relation to the vocational licence I have taken into consideration the Senior Traffic Commissioner's statutory guidance in relation to Driver Conduct and the case of *Meredith*. Essentially when considering what action to take, if any, the personal circumstances of the offender are not relevant in my jurisdiction save in very limited circumstances. However I must take into account the circumstances of the relevant offences. This is in line with relevant case law in

relation to operator licensing. This is the approach I shall take with one proviso. It is regrettable that in the Meredith case Pitchford J was not referred to all the relevant case law – namely he was not referred to the case of Thomas Muir (Haulage) Limited [1999 SC86] heard by a full five judge Court of Sessions. The Court of Session acknowledged that on occasion it is appropriate for a decision to be handed down as a deterrent. The Upper Tribunal has spelt out its support for the Thomas Muir approach in its published digest, available on the internet.

67. For the same reasons as spelt out in relation to my revocation of the operator's licence and for Michael Mainwaring losing his repute as a transport manager, I determine that he is unfit to hold a vocational driver's licence. Being both a partner in the business and being transport manager are serious aggravating features to the three offences of falsifications of records.

68. The Senior Traffic Commissioner's statutory document number 6 on vocational driver conduct has a helpful guideline starting point of one month for each falsification. A starting point is just that, they go up and they go down, depending on both the aggravating and mitigating features of the offences. Here Michael Mainwaring has not merely committed three separate falsifications, there are numerous other drivers' hours offences too. At the hearing it was agreed that a number of the offences were committed to avoid having to take rest periods, but that is a serious road safety issue.

69. Actively encouraging an employee to falsify is a significant aggravating feature. An employee told DVSA examiners and told me that he felt coerced into committing offences by Michael Mainwaring who told him to tell untruths to the DVSA when interviewed. At the hearing before me, at this stage when with consent and advice from his solicitor he was agreeing to an oral decision, there was an indication that the suspension of Michael Mainwaring's vocational driving entitlement would be from 1 February 2020 until 1 June 2020, in other words a four-month period. My order of suspension remains one of four months, but with a different start date as result of the request that the decision be a written one.

70. Michael Mainwaring's vocational entitlement is suspended with effect from 0001 hours on 21 February 2020 until 0001 hours on 21 June 2020.

Other

71. I have not disqualified Ronald Mainwaring under section 28 of the Transport Act 1985, there is no evidence that he either knew of or assisted in any falsifications. I believe that he has been a relatively passive partner. Since I took father's repute away as a transport manager, he has let his son take over the business. A concern that I have is that if Ronald Mainwaring is to be involved in any business within the near or medium term future, his son should not be involved in any capacity other than as a driver until the expiry of his disqualification under section 28 of the Transport Act 1985. On reading the transcript of evidence, it was clear to me that son Michael Mainwaring would have difficulty in stopping himself becoming involved. Whilst I would not have an issue in his being a driver for the business, I would not support any other role. In view of this any future entity would need a very well paid and strong minded individual to carry out an effective transport manager role. He or

she would need to know that if they couldn't keep Michael Mainwaring out of any management role, they should have an expectation that they too would lose their repute as a transport manager.

Decisions

72. I make decisions as set out at paragraphs 1 to 8 inclusive.

A handwritten signature in black ink, appearing to read 'Nick Jones', with a horizontal line underneath the name.

Nick Jones
Deputy Traffic Commissioner

20 February 2020