

WARNING - THE PRINCIPAL DECISION IN THIS CASE CONTAINS CONFIDENTIAL INFORMATION AND MUST NOT BE ISSUED TO THIRD PARTIES WITHOUT THE EXPRESS PERMISSION OF OR EDITING BY THE TRAFFIC COMMISSIONER. THIS IS THE REDACTED PUBLIC VERSION.

IN THE SCOTTISH TRAFFIC AREA



DECISION OF THE TRAFFIC COMMISSIONER FOR SCOTLAND

In the matter of the

**Alan Laughlin T/A AWL Minicoaches
PM1135136**

and

**Transport Manager
Thomas Walker**

Public Inquiry held at Glasgow on 27 January 2020

Decision

1. Pursuant to adverse findings under sections 17(1)(a), 17(1)(b), 17(3)(a), 17(3)(aa), and 17(3)(c) of the Public Passenger Vehicles Act 1981 (hereinafter 'the Act') operator licence PM1135136 is revoked with effect from 23.45 on 30 April 2020.
2. Alan Laughlin is disqualified from holding or obtaining an operator's licence in Great Britain for a period of FIVE YEARS in terms of section 28 of the Transport Act 1985.
3. Transport Manager, Thomas Walker no longer satisfies the requirements of section 14ZA(3) to be of good repute in accordance with Schedule 3 of the Act.
4. Thomas Walker is disqualified for a period of 6 months from engaging in the role of Transport Manager in any Member State. The disqualification commences at 23:45hrs on 30 April 2020.

Background

1. The operator, Alan Laughlin T/A AWL Minicoaches, is the holder of a standard national public service vehicle operator's licence authorising the use of two vehicles. The licence was granted by the former Traffic Commissioner on 2 June 2015 following a public inquiry which had been convened to consider concerns relating to the roadworthiness of the operator's vehicles, the alleged use of an unauthorised operating centre and a failure to notify changes as required in respect of the licence.
2. The decision letter issued by the Traffic Commissioner discloses that she found there to be non-compliance (albeit unspecified) in relation to the restricted licence. She agreed, nevertheless, to accept the surrender of the restricted licence and grant the extant licence on the undertaking that the operator heeded the licence undertakings, kept his records up to date and ensured that the non-compliance found in relation to the restricted licence was not repeated. Mr Walker was appointed Transport Manager on the licence and, at the time of this inquiry, he was not employed as such by any other operator.
3. Reports dated 5 September and 4 November 2019 respectively were received by my office from DVSA vehicle examiner Malcolm Brown and traffic examiner James Sweetin. Mr Laughlin and his transport manger, Mr Thomas Walker, were called to public inquiry by call up letters dated 23 December 2019.

The Public Inquiry

4. The public inquiry called before me on 27 January 2020. Mr Laughlin, Mr Walker, Mr Brown and Mr Sweetin were all in attendance.
5. Mr Walker produced a bundle of documentation in advance of the inquiry. It consisted of: various PMI sheets for vehicles J90 AWL and S46 JAE; receipts for repairs carried out to the vehicles; copy maintenance contract; a contract with Strathclyde Passenger Transport regarding transport for children attending the Scottish Gaelic school; a copy of a tachograph calibration certificate; a copy of a driving licence belonging to one of Mr Laughlin's drivers; and an invoice purporting to relate to the uplift of vehicle J90 AWL. The driver defect reports and the forward planner which I had ordered be brought to the inquiry, were not produced.

Vehicle Examiner Brown's evidence

6. In summary, the inspection of Mr Laughlin's vehicles carried out by Mr Brown had disclosed serious defects. Vehicle J90 AWL had a serious and safety critical defect affecting the suspension of the vehicle. An 'S' mark prohibition had been issued at the time of the inspection prohibiting the vehicle from being driven or towed on public roads. A later inspection of vehicle S46 JAE resulted in a delayed prohibition notice being issued in relation to items including: a fractured brake disc; defective seatbelts; defective fog lamps; and deteriorated brake hoses.
7. Mr Brown's evidence at inquiry was that the serious defect on J90 AWL had been long standing and would have been obvious on inspection. The defect would have caused noise to come from the vehicle and it would have been apparent that something was wrong. He went on to advise that, in his opinion, most of the defects he found on Mr

Laughlin's other vehicle, S46 JAE, were also likely to have been longstanding. Mr Laughlin had challenged his finding that some of the seatbelts on that vehicle were not operational and Mr Brown explained in detail how he carried out the check on the seatbelts, advising that he had done so in accordance with standard industry practice. He had many years of experience in carrying out checks of this nature and was emphatic that the seat belts in question were not operational at the time of his inspection.

8. Mr Brown visited Mr Laughlin's maintenance provider, which was also the operating centre specified on the licence. He found that the garage was designed to maintain cars and light commercial vehicles rather than passenger carrying vehicles such as those operated by Mr Laughlin. Moreover, the facilities were sub-standard and not fit for purpose. There was no evidence that a maintenance contract existed between Mr Laughlin and any maintenance provider at the time of his inspection. From analysis of the documentation that was available, Mr Brown concluded that the inspection regime which was in place was not sufficiently rigorous. Defects which were identified, were not repaired when they should have been.
9. Mr Brown had an opportunity to consider the documentation which had been lodged by Mr Walker in advance of the inquiry. He advised me of his concern over the fact that dates had evidently been altered on some of the PMI sheets which had been produced. He noted that there was a maintenance contract included with the papers, with signatures which pre-dated his inspection, but which had not been provided to him in the course of his investigation. The contract was dated 5 August 2019, but the first inspection of the vehicles by the new provider did not appear from the PMI sheets to have been undertaken until 13 September 2019.
10. Mr Brown was also concerned at the absence of evidence that Mr Walker had reviewed any of the PMI findings or queried the obvious shortcomings in relation to the maintenance of the vehicles. He would have expected to see at least some PMI sheets being counter signed by Mr Walker to demonstrate that he was checking on the maintenance and condition of the vehicles, particularly in light of the operator's high MOT failure rate. In his opinion neither operator, nor transport manager, were adequately fulfilling their duties in relation to the maintenance and upkeep of the vehicles.

Traffic Examiner Sweetin's evidence

11. Mr Sweetin's report disclosed that there had been three roadside encounters with vehicles operated by Mr Laughlin since February 2018. All had resulted in prohibitions being issued. The prohibitions related to defective tachograph equipment, failures to use tachograph recording equipment on 'in scope' journeys, and failures to produce records at the roadside. A check of the systems used by Mr Laughlin to ensure compliance with the undertakings on his licence carried out by Mr Sweetin was also deemed unsatisfactory. In particular, there was no system in place to monitor compliance with the working time directive, and no evidence to show that driver licences were being checked with the required regularity.
12. At inquiry, Mr Sweetin drew my attention to his stop of one of Mr Laughlin's vehicles, J90 AWL, on 24 February 2019. Mr Sweetin advised that at the time of the stop he had assumed that the vehicle had 16 seats, but that he had later found it to have 19 seats. The driver of the vehicle had ultimately been found not to have the correct entitlement

to drive either size of vehicle. The driver told Mr Sweetin that he was on his way to a football match and that he had driven the vehicle on previous occasions, including to football games on 9 February 2019 and 20 February 2019. He advised he was using the vehicle for personal purposes, but Mr Sweetin noted that he was using the tachograph equipment at the time of the stop. He advised that he had returned the tachograph sheets for the previous journeys to Mr Laughlin.

13. Mr Laughlin had denied that the driver in question had ever driven any of his vehicles prior to 24 February 2019. He advised that the driver had been using the vehicle by mistake on 24 February, it having been agreed that the driver would borrow a 9 seater vehicle belonging to Mr Laughlin's son. The driver had been given the wrong keys on the day. Mr Laughlin advised Mr Sweetin that the driver must have been referring to driving his son's vehicles on previous occasions.
14. Mr Sweetin directed me to the images he had taken of Mr Laughlin's booking diary during his investigation. The diary had a list of football fixtures and prices, and included what appeared to be details of football match hires which had been booked for 9 and 20 February 2019. An entry for 24 February 2019, the day of the stop, had been erased.
15. Mr Sweetin also directed me to a letter, purportedly written by the driver of the vehicle, which had been produced by Mr Laughlin during the investigation. The letter was unsigned and undated and Mr Sweetin had had not been contacted by the driver about it. The letter advised, amongst other things, that the driver had been confused on the day of the stop. It alleged that the driver had lied to Mr Sweetin about his previous use of tachograph records and the fact that he had used Mr Laughlin's buses before.
16. Mr Sweetin was shown the additional documentation which Mr Laughlin and Mr Walker had brought on the morning of the public inquiry. He noted that the papers indicated that systems were now in place to monitor compliance with the working time directive and to properly check driving licences. However, he remained concerned at the previous lack of adequate systems and what he saw as significant discrepancies in the evidence regarding the use of the vehicle stopped on 24 February 2019.

Mr Laughlin and Mr Walker's evidence

17. Mr Laughlin accepted that the maintenance of his vehicles had not been undertaken to the required standard, but blamed this on his maintenance provider. When asked why he had used an unsuitable maintenance facility and, why serious and purportedly longstanding faults had been permitted to occur on the vehicles, Mr Laughlin advised that he had not been allowed into the facility to see what was being done. He drove the vehicles regularly, but he was not a mechanic, and could not have been expected to spot faults on the vehicles. He could not have known that the premises were unsuitable. He advised, nevertheless, that he had known the owners of the business for years and had proceeded on trust, because he was paying for it, that things were being done properly.
18. The inquiry papers disclosed that the maintenance provider in use at the time of the inspection had been specified on Mr Laughlin's application for his standard national licence in 2014. However, a change of maintenance provider had been notified to my office in April 2015, prior to the Traffic Commissioner's decision to grant Mr Laughlin's application for his current licence. Mr Laughlin's evidence was that the change back had taken place around 18 months ago. He was unable to advise why he had not

notified my office of the change of provider, as was required of him. I noted that the invoices submitted by Mr Walker in support of Mr Laughlin's position showed that most of the repair work to the vehicles in question had taken place after Mr Brown's initial visit.

19. I asked Mr Laughlin and Mr Walker about their reaction to a prohibition being issued in relation to non-operational seatbelts on a vehicle used to transport children to school. Both Mr Laughlin and Mr Walker sought to challenge Mr Brown's finding that the seatbelts were not operational at the time of the inspection. Mr Laughlin stated that he had fitted replacement belts himself and that inspections of them, after Mr Brown's inspection, had proved they were working. Nevertheless, neither he nor Mr Walker, were able to provide any evidence to support that assertion. Mr Laughlin and Mr Walker accepted the other prohibitions that had been issued in relation to the condition of the vehicles.
20. Similarly, Mr Laughlin and Mr Walker accepted Mr Sweetin's findings that they had not had adequate systems in place to monitor the working time directive, nor to properly check driving licences. Neither did they dispute the prohibitions issued in relation to the use of effective tachograph equipment and failures to produce tachograph records and driver cards. They did, however, seek to challenge the fact of Mr Sweetin's evidence regarding the existence of a calibration certificate for the tachograph on one of Mr Laughlin's vehicles. I noted however, that the prohibition issued related to the failure to display a plaque on the vehicle detailing the calibration information, rather than the existence of a certificate itself. The fact that vehicle was not displaying a plaque as required did not appear to be disputed.
21. Mr Laughlin and Mr Walker also noted that Mr Sweetin had failed to identify, during a stop on 24 February 2019, that a vehicle being driven had 19 seats instead of 16. Ultimately, their concerns appeared to focus on the fact that Mr Sweetin had allowed a driver, who he believed not to have the correct entitlement to drive that size of vehicle, to proceed on his journey after the stop. I noted, nevertheless, that Mr Sweetin had ultimately found that the driver did not have the correct entitlement to drive either size of vehicle. That fact had been accepted by Mr Laughlin, under explanation that the driver in question had driven the vehicle by mistake.
22. Mr Laughlin maintained in his evidence that the driver who had been questioned during the stop on 24 February 2019 had not worked for him or driven his vehicles before. He had done work for his son in the past. The names in the diary entries related to those who had booked hires rather than the drivers themselves, and the deletions were as a result of error or cancellation. He knew lots of people called 'Rab' and it was a coincidence that that was also the driver's name. When asked if he could produce any evidence to confirm any of those assertions, he advised that he could not.
23. In relation to the backdated maintenance contract, both Mr Laughlin and Mr Walker stated that they had been 'in discussion' with the new maintenance provider at the time of the maintenance investigation. Mr Laughlin advised that it had 'taken ages' to get the new supplier to sign the agreement and that was why it was backdated and had only now been produced. No maintenance contract with the previous maintenance provider was produced.
24. Mr Laughlin could not explain why the dates on two of the PMI sheets had been changed. When asked why he had not produced all the documents which had had been

asked to for the inquiry, he advised that he had left a plastic bag containing them on the subway on his way to the inquiry. Mr Laughlin advised that there was a contract between him and Mr Walker, but that too, had been in the misplaced plastic bag. I noted that Mr Laughlin had not been asked to bring a copy of Mr Walker's contract to the inquiry.

25. Ultimately, Mr Laughlin accepted that he had failed to comply with the undertakings on his licence to ensure compliance with the laws on driving and operation of vehicles, to ensure rules on drivers' hours and tachographs were observed and to keep his vehicles in a fit and serviceable condition. He conceded that the alterations made to PMI sheets, the lodging of a backdated maintenance contract, the erasing of details from his booking diary and the production of unsigned letters could give rise to a suspicion that he was falsifying documents in order to hide non-compliance or to counter the examiners' findings. He also accepted that his evidence regarding the last minute loss of documents may appear incredible, but maintained that he was being honest with the inquiry.
26. Mr Walker admitted that he had harboured concerns that the vehicles had been poorly maintained for a considerable period. His evidence was that he thought things were 'ok' until about a year before the maintenance inspection but that it had gone downhill. Mr Walker was a qualified engineer and advised me that he had been concerned about the high MOT failure rate. He had had discussions, starting in early 2019, with Mr Laughlin in an attempt to persuade him to go to another maintenance provider but that had proved difficult. He also accepted that there was no evidence to demonstrate that he had been actively involved in ensuring the vehicles had been kept fit and serviceable.
27. As regards the prohibitions in relation to the defective tachograph and failures to carry records, Mr Walker's position was that the drivers were always told to carry their cards with them, albeit he accepted there was no other evidence to support that. He had repaired a loose wire on the defective tachograph equipment which had attracted the prohibition on occasions between 2017 and 2018 and concluded that it must have malfunctioned again around the time of the stop. He stated that he visited Mr Laughlin 'as often as he needed to' and checked documentation along with him, but there was no fixed schedule for visits.
28. Mr Walker accepted that there had been no system in place for monitoring the working time directive in relation to drivers but advised that the type of work they did meant there was little scope for breaches of that. He had made improvements in the systems he used to manage Mr Laughlin's operation, had studied up on the requirements for monitoring the working the directive, and hoped to attend a refresher CPC course in due course.
29. I noted, with some concern, that Mr Walker often sought to speak for Mr Laughlin at inquiry rather than focussing on his responsibilities as transport manager. It was Mr Walker who had submitted the response to Mr Sweetin's findings, and he tended to agree with what Mr Laughlin said during the public part of the inquiry. In contrast however, I noted Mr Walker's reference in a letter he had lodged in advance of the inquiry, to Mr Laughlin not advising him of important matters, such as the DVSA investigation, timeously. He advised that as a result of that failure he was only able to present Mr Laughlin's 'explanation' rather than his own findings as transport manager.

30. Mr Walker ultimately conceded, taking all of the shortcomings together, that he had not exercised continuous and effective management of Mr Laughlin's transport operation. Put shortly, his evidence was that Mr Laughlin had not made that task easy for him.
31. I heard evidence in private session from Mr Laughlin regarding his finances and separately, from Mr Walker, in relation to information he had submitted regarding his health. Mr Walker also produced a letter detailing the difficult personal circumstances he had endured in recent years.
32. When asked about the effect of disciplinary action, Mr Laughlin's position was that it would have devastating effect on his business. His contract with Strathclyde Passenger Transport was his main source of income and revocation of his licence would mean the end of his business. Disqualification would mean the end of his career in the business. He had one full time and one part time driver who would be made redundant. Suspension or curtailment of his licence for any period of time would have the same effect as revocation.
33. Mr Walker advised that the loss of his repute and subsequent disqualification would mean the end of the road for him as a transport manager. He would also likely suffer financial hardship.

Consideration of the evidence and balancing

34. Mr Brown's evidence was that the defects found on Mr Laughlin's vehicles were serious, obvious and likely longstanding. The inspection regime was not sufficiently rigorous, and defects found were not being repaired timeously. There was no maintenance contract between Mr Laughlin and the provider he was using at the time of the inspection and Mr Laughlin had not notified his change of maintenance provider to my office as he should have done. I was not offered any cogent evidence to counter Mr Brown's assertion that maintenance provider's premises were sub-standard and unsuitable for the type of vehicles operated by Mr Laughlin.
35. With the exception of the allegation regarding the seatbelts on vehicle SA46 JAE, Mr Laughlin accepted the prohibitions that had been issued and that he had failed to comply with the undertaking on his licence to keep his vehicles in a fit and serviceable condition. He asserted, nevertheless, that he was entitled to rely on his maintenance contractor to make sure his vehicles were fit and serviceable. He was not a mechanic and could not have known of the defects that existed on his vehicles.
36. Whilst I would expect an operator to place a degree of reliance on a maintenance provider to do their job properly, I did not accept that Mr Laughlin was entitled to rely blindly on that. It is for an operator and, in the case of standard national licence holders their transport manager, to ensure that the facilities they use are suitable and fit for purpose. They must make reasonable checks and enquiries to ensure that their vehicles are being inspected and maintained to an acceptable standard, and act quickly to ensure any defects are quickly rectified. I found that neither Mr Laughlin, nor Mr Walker, had done so.
37. Mr Walker's evidence was that he had expressed his concern to Mr Laughlin about the high MOT failure rate and the maintenance of the vehicles. I also noted Mr Laughlin's explanation that his inability to meet financial standing at the time of the inquiry was due to his having to spend significant sums on repairs for the vehicles. Many of the

defects found at inspection were longstanding and therefore indicative of sustained neglect. I concluded, that Mr Laughlin was aware that his vehicles were not in a fit and serviceable condition and chose, for a considerable period, to do nothing about that.

38. Whilst Mr Laughlin and Mr Walker disputed the prohibition relating to the seatbelts, neither were able to provide any evidence to support that. The vehicles were used to transport children to school and I would have expected an operator and a transport manager faced with such a prohibition to have taken immediate steps to evidence that it was not warranted. On balance, I preferred Mr Brown's evidence that seatbelts were not operational and concluded that the prohibition was warranted.
39. Prohibitions had also been issued in respect of defective tachograph equipment and various failures to carry records. A check of Mr Laughlin's systems in relation to the management of drivers' hours and record keeping had shown that and there was no system in place to monitor the working time directive, nor a suitable system for checking driving licences. These findings were not challenged by Mr Laughlin or Mr Walker.
40. Standing all of the foregoing, findings in terms of Section S.17(3)(a),17(3)(aa) and 17(3)(c) of the Act are made out. I also find that Mr Laughlin's failure to maintain his vehicles in a fit and serviceable condition posed a significant risk to road safety and gave him a competitive advantage over other operators who complied with their obligation to do so.
41. I assessed the financial evidence provided by Mr Laughlin and concluded that he did not meet financial standing. **[REDACTED]**

42. **[REDACTED]**

A finding in terms of S.17(1)(a) that Mr Laughlin does not meet the requirement set out in S. 14ZA(2)(c) is accordingly made out.

43. In addition to the serious nature of the failings I have already referred to, I also had cause to doubt Mr Laughlin's credibility. His explanations at inquiry lacked consistency and he often had difficulty answering simple questions. Reliance on documents which had been altered and backdated was also a feature. Mr Laughlin could not explain why the dates on the PMI sheets had been changed and advised that the backdating of the contract was carried out as a result of being 'in discussion' with the new maintenance provider. He did nevertheless accept that such discrepancies could give rise to a suspicion that there had been an attempt to conceal a failure to comply with the specified maintenance regime.

44. In addition, Mr Walker had advised my office in advance of the inquiry that the driver defect reports and forward planner which I had requested sight of would be brought on the day of the inquiry. Mr Laughlin failed to produce these, under explanation that he had left them in a plastic bag on the subway on his way to the inquiry.
45. I was unable, on the basis of the evidence before me, to find that the PMI sheets had been deliberately altered. The dates could have been changed in correction of a genuine error. However, I did find the backdating of the maintenance contract to be a deliberate attempt to deflect attention from the length of time that there had not been one in place. Mr Laughlin's explanation of being 'in discussion' with his new provider was not sufficient to justify his actions in falsifying a document so vital in context of the regulatory regime. I considered such a falsification to be extremely serious, and to demonstrate a lack of trustworthiness on the part of Mr Laughlin.
46. I concluded that I was unable to rely on Mr Laughlin's evidence generally. I did not believe his denial that he had allowed a driver without the correct entitlement to drive his vehicle. Such a denial, when weighed against the evidence of the driver during the stop, and his own diary entries, was simply not credible.
47. I was unable to attach any weight to the letter purported to have been written by the driver which was produced by Mr Laughlin. It was unsigned, undated and not spoken to by the driver at any time during the investigation or the inquiry. I find therefore that Mr Laughlin allowed a driver without the correct entitlement to drive one of his vehicles on at least three occasions. I accept that he may not have known the driver did not have the correct driving entitlement, but it was incumbent on him to check before he allowed him to drive the vehicle.
48. In addition, I did not believe Mr Laughlin's story about the loss of the documents on the subway. Even if I am wrong in that, his failure to safeguard those documents properly and his failure to produce them when directed to is itself a serious matter. I had regard to the words of the Upper Tribunal in T/2015/40 Tacsí Gwynedd Ltd:
- “Even without a finding of fabrication, however, a serious regulatory breach has probably occurred. To keep vital evidence of regulatory compliance in an insecure location is unacceptable. The industry needs to hear that message loud and clear. We therefore find that this operator failed to make adequate arrangements for safely storing records of its regulatory compliance. That is a serious regulatory breach”*
49. I considered the failure to produce the driver defect reports and the forward planner to be particularly serious, given the concerns in this case regarding the fitness and serviceability of the vehicles.
50. In balancing, I was able to give Mr Laughlin credit for the admissions he made at inquiry in relation to the failings identified. When the seriousness of matters was put to him, he conceded that he had failed to meet his obligations in terms of his licence. I also noted that he had spent considerable sums of money since the DVSA investigation on the repair and maintenance of his vehicles. He had recently changed to a maintenance provider which appeared to be fit for purpose. Mr Walker had implemented new systems to correctly monitor the working time directive and to properly check driving licences. I also accepted Mr Walker's evidence that, given the type of work undertaken by Mr

Laughlin's operation, breaches of the Working Time Directive had been unlikely to occur.

51. Nevertheless, balancing all of the evidence, I concluded that I was unable to trust Mr Laughlin. I did not believe significant passages of his evidence and I had found that he had deliberately falsified a document which was vital in the context of the regulatory regime.

52. In NT/2013/82 Arnold Transport & Sons Ltd v DOENI the Upper Tribunal said:

“The Tribunal has stated on many occasions that operator’s licensing is based on trust. Since it is impossible to police every operator and every vehicle at all times the Department in Northern Ireland, (and Traffic Commissioners in GB), must feel able to trust operators to comply with all relevant parts of the operator’s licensing regime. In addition other operators must be able to trust their competitors to comply, otherwise they will no longer compete on a level playing field...cutting corners all too easily leads to compromising safe operation. It is important that operators understand that if their actions cast doubt on whether they can be trusted to comply with the regulatory regime they are likely to be called to a Public Inquiry at which their fitness to hold an operator’s licence will be called into question. It will become clear, in due course, that fitness to hold an operator’s licence is an essential element of good repute.”

53. I asked myself the question posed in 2009/225 Priority Freight: How likely is it that this operator will, in future, operate in compliance with the operator licensing regime? Having regard to the failures I had found proved, Mr Laughlin's failure to heed an earlier warning given in relation to similar failings, and his lack of trustworthiness I considered it highly unlikely that Mr Laughlin would comply in the future. I also found that his failures had put road safety at risk and given him an unfair commercial advantage over other operators.

54. Mr Laughlin told me that regulatory action against his licence would mean the end of his business. The question posed in T/2002/217 Bryan Haulage (No.2) is relevant: Is the conduct of this operator such that it ought to be put out of the business?” In reaching my conclusion, I also had regard to the Senior Traffic Commissioner's Statutory Document No. 10: Principles of Decision Making, in particular, Annex 3.

55. This was a case where Mr Laughlin had obtained a commercial advantage over other operators and compromised road safety by deliberately failing, for a significant period of time, to keep his vehicles in a fit and serviceable condition. He had attempted to conceal his failures by falsifying documentation. This was, therefore, a bad case in which dishonesty was a feature. The starting point for regulatory action was severe. I also 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. In the circumstances of this case, it is appropriate and proportionate to answer the *Bryan Haulage* question in the affirmative.

56. I find, therefore, in terms of S.17(1)(a) of the Act, that Mr Laughlin has lost his repute. Accordingly, I am required to revoke Mr Laughlin's operator's licence and I do so with immediate effect.

Disqualification

57. Having decided to revoke Mr Laughlin's licence, I moved to consider whether I should make an order for disqualification. I had regard to the Senior Traffic Commissioner's Statutory Document No. 10: Principles of Decision Making, in particular, Annex 3 in reaching my decision. I also 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..."

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. Mr Laughlin has attended two public inquiries. Similar concerns were raised at both and Mr Laughlin failed to heed the warning of my predecessor. I found this to be a serious case, involving breaches of trust which go to the heart of the licencing regime.

58. Taking account of all the circumstances, I consider disqualification to be necessary to meet the objectives of the operator licensing regime. I have decided to disqualify Mr Laughlin from holding an operator licence for a period of five years.

Mr Walker – Transport Manager

59. Mr Walker had been Mr Laughlin's transport manager since the grant of his standard national licence. He is a qualified engineer and appeared knowledgeable in relation to technical matters. He spoke of his attempts to repair the faulty tachograph which later attracted the prohibition, and he clearly understood the seriousness of the issues regarding the condition of the vehicles.

60. Mr Walker accepted most of the prohibitions and knew that the maintenance of the vehicles was not being carried out to the required standard for a significant period prior to Mr Brown's investigation. He had become worried about that around a year before the inspection, on account of the high MOT failure rate. He had tried to coax Mr Laughlin to change maintenance provider at that point but had met resistance. He conceded that there was no evidence to show that he had been actively involved in monitoring the condition of the vehicles.

61. He also accepted that he had not had adequate systems in place to monitor the working time directive or to check driving licences. His position was that he always reminded drivers to carry the correct documents, but there was no documentary evidence to show that that requirement was enforced. Mr Laughlin only told him about the DSVa investigation at the last minute and he had expressed significant concern about that. He had tried his best, in difficult circumstances, but ultimately, he accepted that he not been exercised continuous and effective management of Mr Laughlin's transport operation as was required of him.

62. [REDACTED]

63. It was obvious that Mr Walker had been significantly affected by illness and his difficult personal circumstances. I found that those difficulties had, most likely, rendered him less able to assert his authority with Mr Laughlin when things started to go wrong. To Mr Walker's credit, he had made improvements in the systems he used to manage Mr Laughlin's operation and studied up on the requirements for monitoring the working of the directive. He advised that he intended to attend a refresher CPC course in due course. I also noted his willingness at inquiry to accept his failures, and to acknowledge that he could have done his job better.
64. Notwithstanding that, there is little doubt that Mr Walker's failure to properly carry out his duties put road safety at risk. He knew the maintenance of Mr Laughlin's vehicles was not being carried out to an acceptable standard, but instead of robustly challenging him on that, he allowed matters to continue to a point where serious and longstanding defects existed. He had failed to ensure robust systems were in place to effectively manage the transport operation. I was also concerned at Mr Walker's tendency to seek to defend Mr Laughlin during the inquiry, rather than to focus on his own responsibilities as transport manager.
65. Whilst I am able to give considerable weight to the evidence put forward by Mr Walker in mitigation, I cannot conclude that his difficulties were such as to render him unable to take action in the face of the failure of Mr Laughlin to ensure his vehicles were fit and serviceable. In the circumstances, he should have acted immediately. Paragraph 25 of the Senior Traffic Commissioner's Statutory Document No.3 makes clear, where a transport manager finds themselves overridden by an operator they should take appropriate action, up to and including, resignation. Mr Walker did not take any such action.
66. Transport managers exist to provide professional competence to operators who require it. They must provide continuous and effective management of the transport operation in respect of which they are appointed. Mr Walker failed in his duty to do so. Even taking into account the mitigation and Mr Walker's position that loss of reputation would mean an end to his career, when balanced against the seriousness of the failures I have identified, I find it proportionate to conclude that he has lost his reputation as a transport manager. I am obliged therefore, by virtue of paragraph 7B of Schedule 3 of the Act, to disqualify him from acting as such.
67. In deciding upon the period of disqualification, I placed much weight on the mitigation put forward by Mr Walker. I concluded that his difficulties impacted to a material extent on his ability to carry out his duties. In the circumstances, I have decided to restrict the period of disqualification to six months.

68. While Mr Walker appeared to be technically knowledgeable, the failures identified indicated that he would benefit from training. Accordingly, as rehabilitation measure, I set the requirement to complete a two-day CPC refresher course. Should Mr Walker wish to be appointed as a transport manager in the future, he will require to appear before a Traffic Commissioner to determine whether his repute should be restored.

Claire M Gilmore

A handwritten signature in black ink, appearing to read 'C. Gilmore', with a long horizontal flourish underneath.

Traffic Commissioner for Scotland
30 April 2020