SENIOR TRAFFIC COMMISSIONER

Statutory Document No. 1

GOOD REPUTE AND FITNESS

This document is issued pursuant to section 4C of the Public Passenger Vehicles Act 1981 (as amended). Representative organisations have been consulted in accordance with that provision.

R Turfitt
Senior Traffic Commissioner

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GUIDANCE

1. The Senior Traffic Commissioner for Great Britain issues the following Guidance under section 4C(1) of the Public Passenger Vehicles Act 1981 ("1981 Act") and by reference to section 1(2) of the Goods Vehicles (Licensing of Operators) Act 1995 ("1995 Act") to provide information as to the way in which the Senior Traffic Commissioner believes that traffic commissioners should interpret the law in relation to the requirements to be of good repute and/or fitness.[1]

Goods Vehicles Legislation: The Goods Vehicles (Licensing of Operators) Act 1995

General Provisions

2. Section 8(4) requires an applicant to provide any further information which a commissioner may reasonably require in relation to the application and in particular, any information specified in paragraph 1 of Schedule 2. This includes particulars of notifiable convictions which have occurred during the preceding five years and relevant activities carried out at any time before the application. Relevant convictions or activities include those of the applicant, any company of which the applicant is or has been a director, where the applicant is a company any person who is its director or any other company linked with that director, any member of a partnership and any parent company.[2]

3. Section 9(1) requires an applicant to inform a traffic commissioner of a notifiable conviction within the meaning of paragraph 4 of Schedule 2, and/or the issue of a notifiable fixed penalty, which occurs between the date of making the application and its disposal. Section 9(2) requires an applicant for a standard licence to notify a commissioner of any change in information supplied under section 8 about the nominated transport manager, which occurs between the date of making the application and its disposal.

Restricted Licences

4. Section 13B requires that an applicant for a restricted licence should not be unfit to hold an operator's licence by reason of:

(a) any activities or convictions of which particulars may be required to be given under section 8(4) by virtue of paragraphs 1(e) or (f) of Schedule 2, or

(b) any conviction required to be notified in accordance with section 9(1) (see below).

An operator's fitness might be subject to material change. A restricted licence holder must also meet the requirements of sections 13C[3] and, if the traffic commissioner thinks fit, the requirements of section 13D. Conditions can be

[1] See Statutory Guidance and Statutory Directions on the Principles of Decision Making & Concept of Proportionality

[2] See Statutory Guidance and Statutory Directions on the Principles of Decision Making & Concept of Proportionality, 2014/008 Duncan McKee and Mary McKee there is no "'five-year rule' relating to previous public inquiries or regulatory action" and a traffic commissioner is therefore entitled to go back as far as they need to in order to determine whether an operator can be trusted to comply in the future

[3] Subsections (5) and (6) apply to heavy goods vehicles only

attached to a licence under section 22(1) and where a licence holder fails to meet these the traffic commissioner can take action under section 26(1)(b).

Standard Licences

5. Section 13(1) requires the applicant to satisfy the traffic commissioner that the relevant requirements of section 13A and 13C are met. Section 13A(2)(b) contains a requirement that an applicant for a standard licence be of good repute (in accordance with paragraphs 1 to 5 of Schedule 3). An individual applicant may be regarded as professionally competent in accordance with paragraph 13 of Schedule 3. In all cases section 13A(3) requires the designation of a suitable number of individuals who meet the requirements of paragraph 14A of Schedule 3 including;

- to be of good repute (in accordance with paragraphs 1 to 5 of Schedule 3);
- in the case of an external transport manager, is not prohibited by a traffic commissioner from acting as a transport manager.

6. The traffic commissioner has powers under section 22 to attach conditions to a licence. Action may be taken against a licence under section 26(1)(b) for a failure to meet the requirements of a licence condition. It is a condition that standard licence operators inform the traffic commissioner within 28 days of any change to:

- the name and legal form of the undertaking (including a change in company number at Companies House);
- the address of the establishment;
- matters affecting good repute;
- matters affecting financial standing;
- matters affecting professional competence;
- the transport manager's good repute and/or professional competence;
- the type of operation, number of vehicles etc.

7. Section 13A(2) states that an applicant for a standard licence must be of good repute. Section 27(1) states that a standard licence must be revoked if it appears to the traffic commissioner that the licence holder is no longer of good repute.

8. Paragraph 1 of Schedule 3 gives traffic commissioners discretionary powers to have regard to any matter in determining whether individuals or companies are of good repute either upon application or at any time during the life of the licence but in particular must have regard to any relevant convictions (see below) of the individual or company/directors, employees/officers, or agents.

9. Under paragraph 2 of Schedule 3 a traffic commissioner must conclude that an individual is not of good repute if he or she has:

a) more than one conviction for a serious offence, or

b) has been convicted of road transport offences.[4]

More than one road transport offence is required for a mandatory finding of loss of good repute.

10. A serious offence is defined as any conviction where one of the following punishments has been imposed:

- imprisonment exceeding three months;
- a fine exceeding level 4 on the standard scale,[5] currently £2500;
- a community order[6] (or equivalent) requiring unpaid work for more than 60 hours or a community payback order requiring unpaid work, or unpaid work and other activity, to be undertaken for more than 60 hours;
- any punishment outside the UK corresponding to the above.

11. A road transport offence is defined as follows:

(a) an offence under the law of any part of the United Kingdom relating to road transport including, in particular:

(i) an offence relating to drivers' hours of work or rest periods, the weights or dimensions of commercial vehicles, road or vehicle safety or the protection of the environment; and

(ii) any other offence concerning professional liability; or

(b) any corresponding offence under the law of a country or territory outside the United Kingdom.

12. For the purposes of both restricted and standard licences:

(a) Relevant activities are not limited merely to activities that may be referred to in a request from a traffic commissioner[7] and are far wider, including any activity whilst carrying on any trade or business, in the course of which vehicles are operated, employment in that type of business or as a director of that type of business.

(b) Relevant convictions can be summarised as any of the following offences committed by the applicant, any company of which the applicant is or has been a director, where the applicant is a company any person who is its director or any

[4] These provisions were amended by the Regulations to give effect to Council Directive 98/76/EC, amending Council Directive 96/26/EC. The 1996 Directive, as amended, distinguishes between "serious criminal offences" and "serious offences" relating to aspects of road transport, as specified in the Directive. The respective Regulations implementing the amended Directive imposed a mandatory finding that an operator is no longer of good repute if either criterion applies. Now see Regulation (EC) No 1071/2009

[5] www.sentencingcouncil.org.uk

[6] See legal definitions under paragraph 3(3) of Schedule 3. Paragraph 5 of Schedule 3 the reference to a community order includes a service community order or overseas community order under that Act

[7] 2018/010 C Ingram trading as T.I.P Skips

other company linked with that director, any member of a partnership, any parent company and any employee or agent:

- an offence under section 53 of the Road Traffic Act 1988 (plating certificates and goods vehicle test certificates);
- an offence in relation to a goods vehicle relating to the maintenance of vehicles in a fit and serviceable condition, or overloading, or the licensing of drivers;
- a drivers' hours offence relating to a goods vehicle;
- an offence under sections 173 or 174 of the Road Traffic Act 1988 (forgery, false statements or the withholding of information) in relation to international road haulage permit;
- an offence under section 3 of the Control of Pollution Act 1974, or section 2 of the Refuse Disposal (Amenity) Act 1978, or section 1 of the Control of Pollution (Amendment) Act 1989, or section 33 of the Environmental Protection Act 1990;
- an offence in relation to a goods vehicle in contravention of a provision prohibiting or restricting waiting vehicles made under the Road Traffic Regulation Act 1984 or a relevant traffic regulation order;

and the following offences committed by the applicant, any company of which the applicant is or has been a director, where the applicant is a company any person who is its director or any other company linked with that director and any member of a partnership, any parent company:

- an offence under the Goods Vehicles (Licensing of Operators) Act 1995, the Transport Act 1968 or the Road Traffic Act 1960 relating to licences or means of identification;
- an offence relating to section 13 of the Hydrocarbon Oil Duties Act 1979 (unlawful use of rebated fuel oil in relation to goods vehicles);
- an offence under section 74 of the Road Traffic Act 1988 (duty to keep inspection records in relation to goods vehicles);
- an offence under regulation 38 of the Environmental Permitting (England & Wales) Regulations 2016[8];
- an offence under section 42 of the Armed Forces Act 2006 when the corresponding offence under the law of England and Wales is an offence mentioned in paragraph 5 of Schedule 2.

13. Under paragraph 5(2) spent convictions must be disregarded and a traffic commissioner has discretion to disregard any other offence as appropriate based

[8] Definitive Guidance on Environmental Offences has been issued by the Sentencing Council to the courts in England and Wales, with effect from 1st July 2014. https://www.sentencingcouncil.org.uk/wp-content/uploads/Environmental-offences-definitive-guideline-Web.pdf

on the time which has expired since the conviction (subject to the guidance below).

Passenger Carrying Vehicles Legislation: The Public Passenger Vehicles Act 1981

General Provisions

14. Section 14(1) states that an applicant for a standard or a restricted licence must be of good repute. Section 17(1) requires that a standard licence must be revoked if it appears to the traffic commissioner that the licence holder is no longer of good repute.

Restricted Licences

15. Section 14ZB requires that an applicant for a restricted licence should be of good repute and have appropriate financial standing. This may include consideration under section 14ZC(1)(b) of whether there will be adequate arrangements for securing compliance with the law relating to the operation of vehicles by reference to whether an applicant falls within the classification of a restricted licence as defined by section 13(3).[9]

Standard Licences

16. Section 14ZA requires the applicant to satisfy the traffic commissioner that it has an effective and stable establishment; is of good repute; has appropriate financial standing; and is professionally competent. Section 14ZA(3) requires that a designated transport manager must meet the requirements of Article 4 of Regulation (EC) No 1071/2009[10] including:

- to be of good repute (in accordance with paragraphs 1 to 5 of Schedule 3);
- in the case of an external transport manager, not to be prohibited by a traffic commissioner from acting as a transport manager.

17. Action may be taken against a licence under section 17(3)(b) for a failure to meet the requirements of a licence condition. It is a condition for operators to inform the traffic commissioner within 28 days of any change to:

- the name and legal form of the undertaking (including a change in company number at Companies House);
- the address of the establishment (standard licences);

[9] A restricted licences authorises the use of a) public service vehicles of eight passenger seats or less; and b) public service vehicles of up to sixteen passenger seats when i) used otherwise than in the course of a passenger carrying business; or ii) where the main occupation is not the operation of public service vehicles of more than eight passenger seats. In determining the main occupation of an applicant traffic commissioners may consider tax or other documentation including an individual's P60 and in the case of corporate entities may consider accounts, tax returns and documents such as the memorandum of association. See also Statutory Guidance and Statutory Directions on PSV Operations.

[10] Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC (Retained EU Legislation)

- matters affecting good repute;
- matters affecting financial standing;
- matters affecting professional competence (standard licences);
- the transport manager's good repute and/or professional competence (standard licences);
- the type of authorisation, number of vehicles etc.

18. Paragraphs 1(1) and (2) of Schedule 3 give traffic commissioners discretionary powers to determine whether individuals or companies are of good repute but in particular they must have regard to any relevant convictions (see below) of the individual or company/directors, employees/officers, or agents and also any previous conduct in relation to the operation of vehicles in the course of business.

19. Under paragraph 1(3) a traffic commissioner must conclude that an individual is not of good repute if he or she has:

a) more than one conviction of a serious offence, or

b) has been convicted of road transport offences.[11]

More than one road transport offence is required for a mandatory finding of loss of good repute:

20. A serious offence is defined as any conviction where one of the following punishments has been imposed:

- imprisonment exceeding three months;
- a fine exceeding level 4 on the standard scale[12], currently £2500;
- a community order (or equivalent) requiring unpaid work for more than 60 hours or a community payback order requiring the offender to undertake unpaid work, or unpaid work and other activity, for more than 60 hours;
- any punishment outside the UK corresponding to the above.

21. Paragraph 1(5) defines a road transport offence as:

- an offence in the UK relating to road transport and including drivers' hours, overloading of commercial vehicles, road and vehicle safety;
- any corresponding offence outside the UK;

[11] These provisions were amended by the Regulations to give effect to Council Directive 98/76/EC, amending Council Directive 96/26/EC. The 1996 Directive, as amended, distinguished between "serious criminal offences" and "serious offences" relating to aspects of road transport, as specified in the Directive. The respective Regulations implementing the amended Directive imposed a mandatory finding that an operator is no longer of good repute if either criterion applies. Now see Regulation (EC) No 1071/2009

[12] www.sentencingcouncil.org.uk

- under paragraph 1(8) spent road transport convictions must be disregarded subject to the guidance below.

22. PSV Operators will also be aware of their duties under section 20 to report to the Secretary of State[13], as soon as practicable, any failure or damage of a nature which has been calculated to affect the safety of occupants of a public service vehicle owned by them or of any persons using the road.

23. The Public Service Vehicle Accessibility Regulations 2000 require[14] (subject to exemptions[15]) vehicles with a passenger capacity in excess of 22, which are used on local or schedules services to incorporate a wheelchair space and boarding ramp or lift, and other features to help disabled passengers to travel in comfort and safety.[16] Further, the Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers) Regulations 1990 (as amended) require drivers to help all passengers to board vehicles, including operating wheelchair ramps and lifts, and ensuring that wheelchairs and their users are restrained appropriately.

Other Relevant Legislation: Convictions and Infringements

The Rehabilitation of Offenders Act 1974

24. Section 1 of the Rehabilitation of Offenders Act 1974 ('the 1974 Act') provides that a person is to be treated as a rehabilitated person and applies equally in Scotland[17] for the purposes of a traffic commissioner. A conviction is to be treated as spent[18] provided that the following conditions are satisfied in relation to any offence or offences committed before or after commencement of the 1974 Act:

- the sentence imposed is not excluded from rehabilitation under the 1974 Act;

- since the conviction and during the relevant rehabilitation period, there has not been a subsequent conviction and sentence which is excluded from rehabilitation.

25. The convictions of corporate bodies are not subject to the Rehabilitation of Offenders Act 1974. Section 1 of the 1974 Act specifically refers to conviction of an "individual". Section 5 of the Interpretation Act 1978 makes clear, words and expressions listed in Schedule 1 are to be construed as according to that Schedule *unless the contrary intention appears* as it does in section 1(1) of the 1974 Act. The Goods Vehicles (Licensing of Operators) Act 1995 provides another example in Schedule 3 which differentiates between an individual at paragraph 1(1) and paragraph 1(2) which refers to a company. The same is true of Schedule 3 of the Public Passenger Vehicles Act 1981.

26. A person can only become a rehabilitated person if the sentence has been served in full or there has been full compliance with the requirements of the sentence. A

[13] https://www.gov.uk/guidance/report-an-incident-involving-your-organisations-bus-or-coach
[14] https://www.gov.uk/government/publications/accessible-buses-and-coaches
[15] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1042121/letter-from-baroness-vere-to-home-to-school-and-rail-replacement-coach-services-on-psvar-compliance.pdf
[16] https://www.gov.uk/government/publications/bus-coach-accessibility-faq
[17] Although the periods differ as set out in the below Statutory Directions
[18] https://check-when-to-disclose-caution-conviction.service.gov.uk/steps/check/kind
https://www.mygov.scot/convictions-higher-level-disclosures/spent-convictions

failure to pay a fine or breach of a community penalty does not exclude a person from subsequently becoming rehabilitated. A sentence of imprisonment is deemed to have been served as at the time that the order requires the offender to be released from prison.

27. Section 4 of the Act sets out the effect that rehabilitation has on an offender. A person who has become a rehabilitated person shall be treated for all purposes in law as a person who has not committed or been charged with or prosecuted for or convicted of or sentenced for the offences which were the subject of the conviction. The result is specifically limited and refers to convictions rather than the conduct itself:

- no evidence is admissible in any proceedings before a judicial authority in Great Britain to prove that the individual has committed or been charged with or prosecuted for or convicted of or sentenced for any offence which is the subject of the spent conviction; and

- no question can be put to that individual in any such proceedings, which cannot be answered, without acknowledging or referring to a spent conviction.

28. For the purposes of section 4 of the Act "proceedings before a judicial authority" include, in addition to proceedings before a court of law, proceedings before any tribunal, body or person having power:

- by virtue of any enactment, law, custom or practice;

- under the rules governing any association, institution, profession, occupation or employment;

- under any provision of an agreement providing for arbitration with respect to questions arising under there;

- to determine any question affecting the rights, privileges, obligations or liabilities of any person or to receive evidence affecting such matters.

29. Section 5 sets out the rehabilitation periods as summarised in the attached Statutory Directions.[19] Section 6 sets out the rehabilitation period applicable where multiple convictions apply:

- where only one sentence covered by this Act is imposed the rehabilitation period is as set out at section 5;

- where more than one sentence covered by this Act is imposed in respect of a conviction (whether or not in the same proceedings) the applicable rehabilitation period is that for the longer sentence;

- where a person is conditionally discharged[20] or a probation order is made and after the end of the applicable rehabilitation period he is dealt with, in consequence of a breach of the order for the offence for which the order was

[19] Subject to the Legal Aid, Sentencing and Punishment of Offenders Act 2012

[20] In Scotland a defendant might receive an Admonition or be admonished where that defendant has been found guilty but is neither imprisoned nor fined but the conviction is still recorded as opposed to an absolute discharge in England and Wales which is not placed on the record.

made then he shall not be treated as having become rehabilitated until the end of the rehabilitation period for the new sentence;

- if during the rehabilitation period the person convicted is convicted of a further offence (other than a summary offence) and no sentence excluded from rehabilitation is imposed any rehabilitation period which would end the earlier shall be extended so as to end at the same time as the other rehabilitation period;

- the rehabilitation period applicable to another conviction cannot be extended by reference to an order imposing on a person any disqualification, disability, prohibition or other penalty.

30. The provisions do not apply to a conviction in another country which would not have constituted an offence if it had taken place in any part of Great Britain.

31. Section 7(3) provides that:

'If at any stage in any proceedings before a judicial authority in Great Britain… the authority is satisfied, in the light of any considerations which appear to it to be relevant (including any evidence which has been or may thereafter be put before it), that justice cannot be done in the case except by admitting or requiring evidence relating to a person's spent convictions or to circumstances ancillary thereto, that authority may admit or, as the case may be, require the evidence in question…, and may determine any issue to which the evidence relates in disregard, so far as necessary, of those provisions.'

32. Whilst section 7(3) of the Rehabilitation of Offenders Act 1974 (as amended) allows a "spent" conviction to be admitted, traffic commissioners must also be aware of the specific provisions relating to spent convictions in the Goods and PSV legislation, as above.

33. In 2014/008 Duncan McKee & Mary Mckee, the Upper Tribunal reminded traffic commissioners that "*this is a civil commercial jurisdiction with a strong emphasis on firm and consistent regulation, public protection and fair competition. One key question that routinely arises in cases such as this is whether or not the TC can trust an operator to be compliant in the future. In our view, especially with a pattern of ongoing and apparently continuous non-compliance in the past, TCs are entitled to go back as far as they need to, in order to properly answer this question (subject to the permitted statutory framework which, of course, does impose time limits in relation to some aspects)"*. The Senior Traffic Commissioner has identified some examples of where justice might require a traffic commissioner to consider admitting evidence of a spent conviction:

- Non-disclosure – the Tribunal made clear its view on a failure to notify: "*In considering how to dispose of the appeal we wish to make it clear that we regard the… conviction and the non-disclosure as serious matters"*.[21] Traffic commissioners might also wish to consider cases where the party would benefit from, for example, repeated adjournments or a failure to report the conviction to the traffic commissioner (which only came to light much later) or failed to be sentenced for the offence(s) for several months due to an

[21] 2000/055 Michael Leslie Smith trading as Mike Smith Transport

outstanding trial of other defendants, and, for example, under section 26(1)(b) for breach of a condition.

- Rebuttal - to refute a positive assertion. For example, if an operator has made a positive statement about an incident or offence that is not correct, this might require a traffic commissioner to revisit an earlier preliminary indication not to seek to admit the relevant spent conviction.

- Similar fact – i.e. evidence of prior conduct which demonstrates the same failings or shortcomings in management. In some circumstances, it may not be possible to assess the attitude of an operator when something goes wrong which, as the Upper Tribunal indicates, can be very instructive and to the benefit of a party.

Cautions

34. The Criminal Justice and Immigration Act 2008 amended the Rehabilitation of Offenders Act 1974 to bring warnings, reprimands, simple cautions and conditional cautions within the scope of that Act. Section 8A and Schedule 2 of the Rehabilitation of Offenders Act 1974 (as amended) mean that reprimands and warnings are spent at the time they are given, and conditional cautions are spent after three months. A person who is given a caution which is spent shall be treated for all purposes in law as a person who has not committed, been charged with or prosecuted for, or been given a caution for the offence and no evidence is admissible in any proceedings before a judicial authority to prove that person has committed, been charged with or prosecuted for, or been given a caution for the relevant offence. That person cannot be asked in the course of any proceedings any question which cannot be answered without acknowledging or referring to a spent caution or any ancillary circumstances.

Regulation (EC) No 1071/2009 - Serious infringements

35. Annex IV of the Regulation (EC) No 1071/2009 and Commission Regulation (EU) 2016/403 identify the most serious infringements (MSI) that must be considered by traffic commissioners for the purposes of Article 6(2)(a) relating to good repute.[22]

36. They are as follows:

1. a) Exceeding the maximum 6-day or fortnightly driving time limits by margins of 25% or more.

   (b) Exceeding, during a daily working period, the maximum daily driving time limit by a margin of 50% or more without taking a break or without an uninterrupted rest period of at least 4.5 hours.

2. Not having a tachograph and/or speed limiter or using a fraudulent device able to modify the records of the recording equipment and/or the speed limiter or falsifying record sheets or data downloaded from the tachograph and/or the driver card.

[22] See Statutory Guidance and Statutory Directions on the Principles of Decision Making and the Concept of Proportionality on the approach to be taken.

3. Driving without a valid roadworthiness certificate if such a document is required under Community law and/or driving with a very serious deficiency of, inter alia, the braking system, the steering linkages, the wheels/tyres, the suspension or chassis that would create such an immediate risk to road safety that it leads to a decision to immobilise the vehicle.

4. Transporting dangerous goods that are prohibited for transport or transporting such goods in a prohibited or non-approved means of containment or without identifying them on the vehicle as dangerous goods, thus endangering lives or the environment to such extent that it leads to a decision to immobilise the vehicle.

5. Carrying passengers or goods without holding a valid driving licence or carrying by an undertaking not holding a valid Community licence.

6. Driving with a driver card that has been falsified, or with a card of which the driver is not the holder, or which has been obtained on the basis of false declarations and/or forged documents.

7. Carrying goods exceeding the maximum permissible laden mass by 20% or more for vehicles the permissible laden weight of which exceeds 12 tonnes, and by 25% or more for vehicles the permissible laden weight of which does not exceed 12 tonnes.

37. Article 16 refers to the establishment of a national register, which must contain:

i. the name and legal form of the undertaking;
ii. the address of its establishment;
iii. the names of the transport managers designated to meet the conditions as to good repute and professional competence;
iv. the type of authorisation, the number of vehicles it covers and, where appropriate, the serial number of the Community licence and of the certified copies;
v. the number, category and type of serious infringements, as referred to in Article 6(1)(b), which have resulted in a conviction or penalty during the last 2 years;
vi. the name of any person declared to be unfit to manage the transport activities of an undertaking, as long as the good repute of that person has not been re-established pursuant to Article 6(3), and the rehabilitation measures applicable.

Interconnectivity of the national registers between Member States

38. Commission Implementing Regulation (EC) 2016/480 ensures that there is interconnectivity between the various national registers.[23] Traffic commissioners may therefore be referred to incidents where an operator and/or transport manager has been convicted of a *serious criminal offence* or has incurred a penalty within the European Union for a serious infringement of Community rules relating to:

[23] Regulation (EC) No 1071/2009 and the Trade and Cooperation Agreement between the European Union and the United Kingdom of Great Britain allow for the continued sharing of information.

- the driving time and rest periods of drivers, working time and the installation and use of recording equipment;
- the maximum weights and dimensions of commercial vehicles used in international traffic;
- the initial qualification and continuous training of drivers;
- the roadworthiness of commercial vehicles, including the compulsory technical inspection of motor vehicles;
- access to the market in international road haulage or, as appropriate, access to the market in road passenger transport;
- safety in the carriage of dangerous goods by road;
- the installation and use of speed-limiting devices in certain categories of vehicle;
- driving licences;
- admission to the occupation;
- animal transport.

Case Law

39. This Guidance may be subject to decisions of the higher courts and to subsequent legislation. As good repute and fitness are not fully defined in legislation the Senior Traffic Commissioner has extracted the following principles and examples from existing case law which apply to both.[24] Where a legal person is subject to an existing disqualification that means they cannot be involved in an application or operation[25] and they will likely need to be considered at public inquiry on any application to re-enter the industry after the expiry of any disqualification.[26] This is different from the position on convictions which once the statutory rehabilitation period has passed should be treated as spent.[27] Repute is a mandatory and continuing requirement and although repute must be considered as at the date of any decision that does not mean that the past becomes irrelevant. The Upper Tribunal has said that *"in many cases, the present is simply the culmination of past events."*[28]

40. The phrase 'road transport offences' has been interpreted so as to be consistent with the wording and purpose of the Directive and to achieve the intended result (as per the third paragraph of Article 249 of the EC Treaty).[29] This approach has also been followed in domestic case law.[30] The retained EC legislation refers to "serious" road transport offences. It follows that traffic commissioners are not required to revoke licences, but may still take action under discretionary powers, for loss of good repute if operators are convicted of or are issued fixed penalty notices for a number of minor road transport offences such as a failure to comply with construction and use requirements (see Article 6 at Annex 2). As a matter of consistency traffic commissioners have generally viewed as serious those offences which have a significant adverse impact in particular on:

[24] 2013/007 Redsky Wholesalers Ltd, 2018/010 C Ingram trading as T.I.P Skips
[25] 2013/040 Southwaterstreet Ltd trading as S W Transport and Thomas McKinney - as a Director, 2014/066 Bridget Burden & Partners – as a partner
[26] 2014/073 Skyway Travel (UK) Ltd, Fazal Karim Ali, Farmida Akhtar
[27] Whilst the periods of rehabilitation are set in law, this does not prevent an applicant from applying before convictions are spent, provided that they are properly declared. In NT/2022/658 Stephen Peter Hurley, the Upper Tribunal criticised a lack of reasoning in connect with rehabilitation but the decision is absent of guidance on the approach to be followed.
[28] 2014/059 Randolf Transport Ltd and Catherine Tottenham
[29] Case C-106/89 Marleasing [1990] ECR I-4135 and Case C-334/92 Wagner Miret [1993] ECR I-6911
[30] Litster v. Forth Dry Dock and Engineering Company Ltd [1990] I AC 546, and Pickstone v Freemans plc [1989] AC 66 and Clark v Eagle Star Insurance Co [1988] 4 All ER 417

- an operator's fitness to hold a licence;
- road safety;
- the promotion of fair competition; and
- the protection of the environment.

41. Traffic commissioners must now approach the question of good repute by taking into account not only paragraphs 1-5 of Schedule 3 of the Goods legislation (and by analogy paragraph 1 of Schedule 3 of the PSV legislation) but also Article 6 of Regulation (EC) No 1071/2009.[31] They cannot review the merit of a criminal conviction[32] but must consider the relative seriousness.

42. The Upper Tribunal has explored the scope of the requirement to be of Good Repute[33]. The provisions refer to an individual's[34] or company's[35] fitness to hold a licence as relevant considerations. The Upper Tribunal in their decision: *"underlined the word 'fitness' in both these provisions because it is critical to understanding the breadth of the requirement to be of good repute. It means, for example, that an operator who cannot be trusted to comply with the operator's licensing regime is unlikely to be fit to hold an operator's licence"*.[36]

43. Fitness is an essential element of an operator's repute, and it is more than just convictions, it is the ability to meet the requirements/undertakings on the operator's licence. The Upper Tribunal reinforced in the appeal of ETS[37]: *"… it does not matter whether an operator's licence is held by an owner operator, a partnership or a limited company because in each case the person or persons responsible for managing the business bear the ultimate responsibility for ensuring that the road transport aspect of the business operates in compliance with the regulatory regime. That means that they cannot plead ignorance or put the blame on the transport manager because they are required to have sufficient knowledge of the regulatory regime to ensure compliance in general and the proper performance of the transport manager's duties in particular".* The Tribunal has dismissed an appellant's belief that responsibility for maintenance failings sat with the persons to whom she had handed over responsibility. [38] They confirmed that ultimately *"as the proprietor of the business the responsibility for ensuring that properly maintained vehicles were used for the purposes of that business, rested with her."*

44. The case law indicates the range of knowledge an operator is required to possess in order to ensure satisfactory arrangements[39]. In the case of a standard licence holder, the operator has the benefit of a transport manager with a Certificate of

[31] 2012/034 Martin Joseph Formby trading as G&G Transport
[32] Nottingham City Council v Farooq (Mohammed) [1998] EWHC Admin 991
[33] NT/2013/082 Arnold Transport & Sons Ltd v DOENI as set out in Regulations 5-9 of the Goods Vehicles (Qualifications of Operators) Regulations (Northern Ireland) 2012. In 2017/042 Mark Lyons the Upper Tribunal confirmed *"decisions on the meaning of a section in the 1995 Act or a paragraph in the Regulations, made under that Act, are highly relevant to the interpretation of an identical provision in the Northern Ireland legislation and vice versa."* In relation to Goods Vehicle operator licensing the terms of Regulation 5(1) and 5(2) of the Goods Vehicles (Qualifications of Operators) Regulations (Northern Ireland) 2012, are identical to the terms of paragraph 1 of Schedule 3 of the Goods Vehicle (Licensing of Operators) Act 1995
[34] Paragraph 1(1) of Schedule 3 of the Goods Vehicle (Licensing of Operators) Act 1995
[35] Paragraph 1(2) of Schedule 3 of the Goods Vehicle (Licensing of Operators) Act 1995
[36] NT/2013/082 Arnold Transport & Sons Ltd v DOENI
[37] 2014/024 LA & Z Leonida trading as ETS
[38] 2016/056 Tracy Noddings trading as Noddies Cars
[39] Section 13C of the Goods Vehicles (Licensing of Operators) Act 1995 and 14ZC of the Public Passenger Vehicles Act 1981

Professional Competence. The Upper Tribunal has said that the relationship between an operator and a transport manager is dynamic and integral to the successful operation of a transport business.[40] However, the operator retains the responsibility for ensuring the transport manager performs their duties and in particular exercises continuous and effective management.

45. For restricted licence holders the operator arguably has a more difficult task as they are not required to employ a qualified transport manager, yet the compliance required is no less. An operator must have satisfactory arrangements and should review the need for further training at regular intervals in light of there being no examination to demonstrate ability to manage an operator's licence.[41]

46. A useful indication[42] of relevant evidence would be attendance on an operator licence awareness course, run by either:

- a trade association (e.g. Logistics UK/ RHA/ BAR/ CPT);
- a professional body (e.g. IoTA/ CILT/ SOE/ IRTE);
- an approved examination centre offering the relevant transport manager CPC qualification for the type of licence held; or
- a firm of solicitors (or their associated training organisation) with significant experience with road transport regulatory and compliance issues (defined as having represented road transport operators and/or transport managers in at least 20 public inquiries over the past two years).

However, the level of training will need to be properly assessed in each case based on the size and complexity of the transport operations. An operator is able to depart from the above starting point when giving an undertaking.[43]

47. The provisions regarding road transport offences are entirely separate from the general provisions relating to serious offences. On the previous wording of the legislation the phrase "more than one conviction" did not require proof of different incidents or different days of commission or of hearing in court. On any view a second conviction makes the breach of the law the more serious, since the additional conviction indicates a repetition of wrong-doing which properly affects the issue of general good repute.[44] The Transport Tribunal has previously indicated that traffic commissioners should consider each conviction separately to determine its seriousness, e.g. adherence to the rules relating to drivers' hours is fundamental to road safety.[45] However, the case law importing a test of seriousness to road transport offences predates both the decision in *Crompton trading as David Crompton Haulage v Secretary of State for Transport [2003] EWCA Civ 64* and *2002/217 Bryan Haulage Ltd*, which in any event must now be read in the context of the disqualification provisions.

48. The Road Transport Regulations 2011 did not amend paragraph 2 of Schedule 3 of the Goods Vehicles (Licensing of Operators) Act 1995 to include the word

[40] 2020/071 J Owens Transport Ltd
[41] See Submissions under the Statutory Directions below
[42] 2019/071 Alan John Woolley t/a Dolphin Travel – the Upper Tribunal did not find providing examples of recognised providers as a starting point as anti-competitive
[43] 2021/565 Clayton Francis Jones t/a Street Buses, 2021/2165 Connor Construction (South West) Ltd – an operator cannot appeal its own freely given undertaking.
[44] 2000/009 & 010 JC Stephenson & TE Turner (trading as J&T Transport) and Thomas McHugh v DETR
[45] 2001/074 Brian Edward Clark

serious.[46] However as indicated above the Upper Tribunal expects traffic commissioners to take account of Article 6.1, subparagraph 3 (a), which refers to serious infringements of national rules, and (b) which refers to a serious criminal offence or a penalty for a serious infringement of Community rules. In relation to (b) the Regulations require the traffic commissioner to determine whether the loss of good repute would constitute a disproportionate response.

49. Traffic commissioners should be careful to distinguish between the position of a company and individuals such as directors due to the provisions relating to mandatory loss of repute. Convictions of a company's officers, servants, or agents, however, may be relevant. The minimum repute requirement will not be satisfied if relevant individuals have been convicted of serious criminal offences. That minimum requirement of good repute cannot be reduced by reference to "proportionality".[47]

50. The Upper Tribunal has highlighted the differences between an application where the traffic commissioner exercises a *'gatekeeper function'* and any subsequent regulatory action taken after a licence has been granted.[48] On application the traffic commissioner will wish to determine who[49] will be responsible for fulfilling the undertakings and conditions and whether they are fit to do so.[50] Clearly an application form cannot envisage every situation, for instance where serious convictions are not necessarily notifiable[51] or where convictions are not specifically referred to in the schedules. A traffic commissioner cannot be expected to overlook facts which might be relevant to future compliance.[52] The conditions specified on the licence, however, include a commitment to report convictions recorded against the licence holder or employees or agents of the licence holder.

51. An applicant or operator can be taken to be aware of the various guidance documents issued on behalf of the Senior Traffic Commissioner.[53] The Schedules in the Acts give traffic commissioners a wide discretion so that they 'may have regard to any matter' in determining whether an applicant is of good repute and can take into account any other information which appears to them to relate to the fitness of the individual to hold a licence. The wording of the general conditions on standard licences explicitly imposes a duty to inform the traffic commissioner of any events affecting good repute including convictions listed in the schedules.

52. Traffic commissioners are not limited to the circumstances of a particular offence and will also look at the conduct involved.[54] The Court of Appeal has confirmed that the conduct does not need to be unlawful to fall within the scope of relevance but does have to have some connection to the fitness of the person to hold the

[46] 2012/050 Charlie Roberts Ltd trading as MAN Euro applies Stephenson & McHugh but only so far as to define "serious offence" under Schedule paragraph 2(a) and "more than one conviction". In respect of the remainder of this decision the law was more fully considered in 2010/025 Skip It (Kent) Ltd and Others

[47] 2008/580 Tajinder Singh Dhaliwal and New Bharat Skips Ltd, See Statutory Guidance and Statutory Directions on the Principles of Decision Making.

[48] 2013/046 Shearer Transport Ltd and James Shearer

[49] 2015/062 A S Adams Ltd – this may involve examining links to other entities and family relationships

[50] 2013/019 Susan Tattersall trading as TMS

[51] 2001/044 N Hazel trading as JRS Freight (sentence of 46 months imprisonment for wounding with intent)

[52] 2009/528 KHJ Ltd, once trust breaks down it is very difficult to rebuild – Upper Tribunal stay decision in Jarson Ltd trading as Rob Jones Tractror Hire

[53] 2012/030 MGM Haulage & Recycling Ltd

[54] 2010/049 Aspey Trucks Ltd considering the circumstances surrounding a conspiracy to supply Class B drugs,

licence.[55] They can, for instance, consider general conduct where the operator was well aware of the commercial advantages that he was obtaining by reason of operating outside the operator licensing system and was not operating on a level playing field with his competitors,[56] such as fraud and breach of contract.[57] This might therefore include anti-competitive behaviour, a failure to deliver against registered timetables or the use of fraudulent emissions systems.

53. Traffic commissioners may examine matters where there is no conviction e.g. relevant charges left on the Crown Court file or a Police report of a relevant offence. Traffic commissioners are entitled 'to take into account all reports concerning speeding or overloading when considering an operator's fitness to hold a licence'.[58] Other conduct such as a lack of co-operation and/or honesty during the course of the public inquiry will also be relevant.[59] A failure to supply records that a traffic commissioner has reasonably requested is likely to result in adverse findings against repute or general fitness.[60] It is incumbent on an operator to ensure that prohibitions are cleared before using a relevant vehicle.[61]

54. 'Fronting', where a person, partnership or company, which does not have an operator's licence, uses the operator's licence held by another entity to conceal the fact that they are behaving in a way which requires them to have an operator's licence of their own, is considered to be serious. Fronting deprives the traffic commissioner of the opportunity to oversee an 'operator'. 'Fronting' is aggravated and very much more serious where it is apparent that the entity hiding behind the legitimate 'front' would be unlikely to obtain or would be debarred from holding their own operator's licence. The Upper Tribunal has given clear guidance that evidence of fronting can, on its own, provide justification for deciding that the operator being used as a 'front' has lost its good repute.[62] When concerns are raised that an applicant could be a 'front', they will need to do more than make bare assertions and rely on their good character to satisfy a traffic commissioner that there will be *"clear blue water"* between the applicant and the entity without an operator's licence.[63]

55. It is clear from the case law that loaning a disc is a serious matter[64] as is the use of out of date discs.[65] It is incumbent on an operator who displays a disc from another operator to provide a paper trail to show that the use is legitimate,[66]

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[55] Catch22Bus Limited, Philip Higgs v The Secretary of State for Transport [2019] EWCA Civ 1022 acknowledges that licensing is based on trust and conduct which shows that trust has been undermined is relevant

[56] 2006/073 Anthony George Everett trading as S & A UK, 2015/031 RBS Groundworks Ltd, Rodney Brice-Smith & Kim Brice-Smith: *"not only between hauliers holding standard licences but also between businesses who hold resticted licences."*

[57] 2010/058 Asif Mohammed Din trading as Ribble Valley Private Hire – unauthorised sub-contracting and use of drivers with no CRB checks for taxi work

[58] 2001/010 Thomas Smith

[59] 2017/038 J & K Environmental Services Ltd and Liliana Manole

[60] 2015/040 Tacsi Gwynedd Ltd

[61] 2006/445 J & CM Smith (Whiteinch) Ltd & John Smith

[62] 2011/034 Utopia Traction Ltd, 2012/071 Silvertree Transport Ltd - Gives a further definition: 'fronting' occurs when appearances suggest that a vehicle, (or fleet), is being operated by the holder of an operator's licence when the reality is that it is being operated by an entity, (i.e. an individual, partnership or company), which does not hold an operator's licence and the manner in which the vehicle is being operated requires, if the operation is to be lawful, that the real operator holds an operator's licence. In which circumstances the traffic commissioner is entitled to take a serious view of such conduct. For further assistance on the legal tests for operation see Statutory Guidance and Statutory Directions on Impounding

[63] 2016/044 Sana Aziz

[64] 2000/015 D Murphy trading as Ashley Coaches, 2010/084 & 086 Coach Express Ltd & Others

[65] 2000/027 P Brown trading as Leroy Coaches

[66] 2010/084 & 86 Coach Express Ltd & Others

simply relying on an assertion is not sufficient.[67] If an operator is found to have deliberately not paid vehicle excise duty it is open to conclude that there has been tax evasion,[68] as with the persistent use of untaxed vehicles.[69] The avoidance of fuel excise duty through the unlawful use of untaxed fuel *"undermines fair competition and no responsible regulator can tolerate it"*[70] (and Her Majesty's Revenue and Customs (HMRC) may also impose penalties).[71] In such circumstances traffic commissioners will give very serious consideration as to whether operators can continue to satisfy the repute requirement.

56. Adherence to the rules relating to drivers' hours is fundamental to road safety.[72] The responsibility for ascertaining what is required and for complying with those requirements lies with the operator.[73] The Senior Traffic Commissioner has described three simple steps: check compliance with the governing legislation, train drivers regarding that legislation and monitor compliance, retrain and discipline drivers where shortcomings are identified. Whilst the task of ensuring compliance with those requirements can be delegated, for instance to a transport manager, the responsibility cannot.[74] Traffic commissioners can and will exercise their discretion in individual cases and are therefore entitled to conclude that convictions for this type of breach are serious road transport offences which could then lead to a loss of repute.[75] In cases of persistent breaches of the drivers' hours rules and tachograph regulations, traffic commissioners will scrutinise the operator's arrangements for ensuring compliance expecting detailed evidence of those arrangements to be provided (rather than mere assertions being made).

57. Where the traffic commissioner finds that the operator had knowledge of the breaches and failed to take sufficient and adequate action to prevent reoccurrence, they will give serious consideration as to whether the operator can continue to satisfy the repute requirement. Similarly, where the traffic commissioner finds that the operator had no knowledge of the breaches, they will also give serious consideration as to whether the operator can continue to satisfy the repute requirement as the operator should have been complying with the relevant undertaking. Missing mileage and a failure to retain or keep full records can often result in the remaining records being false as they may not show the true position.[76] In cases of persistent breaches it may be difficult for an operator to contend that he has complied with his undertaking, as it requires a more rigorous regime.[77]

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[67] 2011/058 Robert David Moore trading as RDM Travel
[68] 2000/066 D L Eccles & J Heads trading as Eurohaul
[69] 2001/007 Alcaline UK Ltd (following a withdrawal of funds by an associated company)
[70] NT/2014/019 OC International Transport Ltd v DOENI
[71] 2002/018 UK Plant & Haulage (Services) Ltd
[72] Regulation (EU) 165/2014 (Retained EU Legislation), concerning the construction, installation, use, testing, and control of tachograph recording equipment. The regulation increases the journey distance for exemptions from 50km to 100km from the operator's base for vehicle/trailer combinations with a maximum weight of 7,500kg which are: used to carry materials, equipment or machinery for the driver's use in the course of their work (when driving is not the driver's main activity); used to carry goods and are propelled by natural or liquefied gas or electricity; used to carry live animals from farms to local markets or from market to slaughter
[73] 2010/063 Cornelius Pryde Hart and Abigail Hart trading as Zulu's Minibus, for examples of application see Case C-297/99 Skills Motor Coaches Ltd v Denman [2001] All ER (EC) 289, 2014/037 & 38 Adam Nienaltowski & Fifth Zone Ltd, Vehicle Inspectorate v Bruce Cook Road Planing Limited and Another [1999] UKHL 34
[74] Harding v VOSA [2010] EWHC 713 (Admin) establishes that where a driver does not take the required rest period and has not kept a record of his reasons, they cannot rely on the exemption which allows derogation for safety reasons
[75] 2001/074 Brian Edward Clark
[76] 2011/065 Deep Transport Ltd
[77] 2001/007 Alcaline UK Ltd

58. A licence is issued to an operator on trust that the operator will comply with the requirements and that the application form has been fully, honestly, and accurately completed[78]. A failure to appoint a replacement transport manager after a period of grace or to communicate with the traffic commissioner can amount to serious conduct on the part of the operator.[79] A persistent failure to comply with undertakings, especially following a warning, may provide *compelling* reasons[80] to conclude that there has been a loss of repute/fitness. Traffic commissioners are entitled to have regard to first time annual test failures because they can be a barometer of the way in which the vehicle in question is being maintained.[81] Where traffic commissioners find that trust has been abused it may lead to a loss of repute, for example where there has been a failure to notify changes.[82]

59. The honest and truthful completion of an application for a licence is fundamental to the operator licensing system. Operators should therefore also ensure that each user of the Vehicle Operator Licensing system has their own unique log in details, that username and password information is kept secure and that the list of users is kept up to date when someone leaves their employment.[83] The Upper Tribunal has reminded applicants that before submitting an application, they should have the requisite experience or training to fully appreciate what is required of an operator under the regulatory regime.[84] A traffic commissioner is entitled to conclude that an application form should have been checked by the applicant, a company secretary or by the directors/officers of the company[85] and that the vehicles will be operated by the person who has applied for the licence.[86] Clearly the provision of false bank statements,[87] or the failure to disclose relevant previous conduct such as convictions[88] or revocations[89] or insolvency,[90] will entitle the traffic commissioners to question the operator's repute and is likely to have a serious impact upon that repute.

60. A history of involvement with dissolved companies without any evidence of actual wrongdoing will not of itself amount to a loss of repute.[91] Where an individual has declared a previous bankruptcy but produced a discharge certificate[92] and satisfactory financial evidence, in the absence of any other issue this should not of its own prevent grant. However, the use of "Phoenix" arrangements to avoid previous liabilities may amount to unacceptable business practice.[93] A phoenix company is where the assets of one limited company are moved to another legal entity (sometimes referred to as a 'pre-pack') but with no obligation to pay the failed company's debts. The conduct of the company is an important factor when

[78] 2016/074 Christchurch Coaches Ltd
[79] 2012/001 Zeeshan Malik trading as Langston's Group
[80] 2011/036 LWB Ltd
[81] 2012/023 JA & VC Fryer Farms
[82] 2000/36 Chris Clark & Co, 2008/410 Brian Hill Waste Management Ltd (prior to administration)
[83] https://www.vehicle-operator-licensing.service.gov.uk/auth/login, operators are now required to review users as part of their licence continuation
[84] 2020/055 URA Ventures Ltd
[85] 2000/041 Hi-Kube Transport Ltd
[86] 2004/426 E A Scaffolding & Systems Ltd, 2004/255 M Oliver, Marion Oliver, Stuart,Oliver and Revilo Logistics Ltd, 2009/264 Alistair Ronald Brown
[87] 2006/313 David Lloyd
[88] 2000/059 Dolan Tipper Services Ltd
[89] 2004/367 N & S Gillman
[90] 2007/212 Huxley Travel Ltd
[91] 2010/067 Pemberton Transport Ltd and Miss Lynne Walker
[92] See Statutory Guidance and Statutory Directions on Legal Entities
[93] 2010/083 Paul Frederick Boomer trading as Carousel and see Statutory Guidance and Statutory Directions on Legal Entities

considering repute and any suggestion that a company has for example favoured trade creditors over the Crown will prompt questions as to the motive behind such actions.[94] Commissioners will scrutinise such applications carefully to ensure the promotion of the principle of fair competition[95].

61. Dishonesty[96] and illegal operation are very serious matters which need to be evaluated on a case-by-case basis to determine the substance, nature and degree.[97] Generally, traffic commissioners are entitled to conclude that a person does not have the required repute where they have decided to operate without authorisation (either on an interim or full licence) particularly in the face of warnings not to.[98] All operators have a positive duty to co-operate with the Driver and Vehicle Standards Agency (DVSA) and the traffic commissioner.[99] Any attempt to deceive a traffic commissioner is serious conduct which cannot be condoned, particularly where an operator and/or applicant relies on a document that has been altered so that it might mislead a traffic commissioner.[100] Similarly operators who deliberately deceive and present false evidence to traffic commissioners, either in correspondence or at public inquiry, are also liable to prosecution through the criminal courts and are likely in serious cases to receive a custodial sentence.[101] It follows that, where an operator is later found to have misled the Upper Tribunal or other tribunal of law, they place at risk their ability to hold an operator's licence.

62. Other relevant conduct may include, but not be limited to, matters such as:

- a failure to heed instructions[102] from enforcement agencies[103] or police officers[104];
- a decision to not take the opportunity to give evidence which might result in inferences being drawn from silence[105];
- attempts to circumvent the operator licensing system[106] or vehicle/trailer registration regime[107];
- failure to ensure relevant declarations are posted for drivers in EU Member States[108];

[94] 2014/064 Alan Michael Knight – the amount owed to the Crown creditors was close to 90%
[95] 2010/081 Natalie Hunt trading as Wild Stretch Limousines – the longer unlawful operation continues the more difficult it becomes for any application to be granted, the application will need to be considered with great care to ensure that the applicants are not taking advantage of a phoenix operation in order to hide previous unlawful operation
[96] The Supreme Court formulated a new test for criminal dishonesty in Ivey v Genting Casinos (UK) Ltd [2017] UKSC 67 effectively removing the second (subjective) limb of the test established in R V Ghosh [1982] EWCA Crim 2 but also emphasises a subjective aspect to the circumstances that fall to be considered. The Court of Appeal summarised this as a two part test in R v Barton and Booth [2020] EWCA Crim 575
[97] 2023 144 Leafy Designs Ltd
[98] 2005/537 West Mix Ltd, 2002/027 Duncan Brodie trading as Duncan Brodie Transport
[99] 2010/064 JWF (UK) Ltd, this may include attendance at educational seminars – 2014/044 Stephen James Beattie trading as Sowerby Mininbus Travel or to provide compliant documentation – 2013/029 Stuart McAuliffe
[100] 2002/009 George Gollop & Direct Movement Services Ltd, 2005/087 P Duckmanton trading as Cartrans (maintenance records), 2002/075 Hazco Environmental Services Ltd (Drivers' hours)
[101] Sara Iddon v Dr Karen Warner [2021] EWHC 587 (QB) shows that the courts will consider whether any actions were dishonest by the standards of ordinary decent people by reference to Howlett v Davies [2017] EWCA Civ 1696 and London Organising Committee of the Olympic and Paralympic Games v Sinfield [2018] EWHC 51
[102] Any failure to follow lawful instructions, obstruct/intimidation of public officials such as DVSA examiners, or operation outside of any international agreements
[103] e.g. Health and Safety Executive who can refer workplace transport incidents such as load security
[104] 2005/050 Rush Travel
[105] NT/2022/001 Derrymorgan Transport Ltd v DVA
[106] 2006/056 Paul Oven Transport Services Ltd, 2006/073 Anthony George Everett trading as S & A UK
[107] Such as a failure to lawfully display the correct registration plate. In future this may include a failure to notify the Secretary of State of an intention to use longer semi-trailers on a road
[108] https://www.postingdeclaration.eu/landing

- recurring civil penalties and breaches of other enforcement regimes such as the Home Office code of practice on preventing clandestine entrants[109];
- findings by the Competition Appeal Tribunal or action taken by The Pensions Regulator, will also have a serious impact on repute.[110]

63. In such circumstances a traffic commissioner might be prompted to attach further conditions at grant or to seek undertakings to ensure compliance with those codes.[111] Operators are expected to follow best practice guidance which is aimed at improving road safety, such as those issued by the DVSA on vehicle roadworthiness[112], Department for Transport on road transport security[113], guidance relating to Bus and Coach Security[114] and Highways England's guidance on how to prevent and minimise diesel spillages.[115] The Driver and Vehicle Standards Agency has also produced a number of guidance documents including guidance on load security[116] and how to read brake test reports.[117] Operators should adopt a risk-based approach by regularly checking vehicle safety recalls on the GOV.UK portal.[118]

64. Subject to the restrictions in the Goods and PSV legislation referred to above, any reference to "a conviction" is not the same as a court hearing resulting in a finding of guilt. For example, a conditional discharge is not strictly a conviction[119] (see above). The same will apply to other alternative court disposals including an absolute discharge. A discharge from a court will NOT be a disposal that renders a licence liable to automatic revocation, but authorities are entitled to ask questions. The application of the Rehabilitation of Offenders Act 1974 can prove difficult when traffic commissioners are considering multiple offences and it is important to differentiate between summary only offences and offences which can or must be dealt with by the higher courts.[120]

65. Useful parallels can be drawn from other licensing regimes[121] when determining the relevance of previous convictions to proceedings before a traffic commissioner. Commissioners are reminded of the principles set out below when deciding whether to consider spent convictions:

- where a judicial authority is considering whether justice cannot be done in a particular case except by admitting evidence of spent convictions, it would be

[109] Issued pursuant to the Immigration and Asylum Act 1999
[110] 2011/065 Deep Transport Ltd
[111] For instance failures to comply with Regulation (EU) 181/2011 (Retained EU Legislation) (national enforcement authority designated under The Rights of Passengers in Bus and Coach Transport (Exemptions and Enforcement) Regulations 2013) on bus and coach passenger rights, including regular coach services (via Bus Users UK & London TravelWatch); breach of the voluntary guidelines on the carriage of passengers to designated sporting events in England and Wales (see Annex 3); the above Home Office Code of Practice pursuant to Immigration and Asylum Act 1999
[112] https://www.gov.uk/government/publications/guide-to-maintaining-roadworthiness. 2022/1227 Lineage UK Transport Ltd – acknowledgement that the guide is *"an important tool which may be utilised by an operator to ensure or inform as to compliance with required safety standards"*
[113] https://www.gov.uk/government/publications/security-guidance-for-goods-vehicle-operators-and-drivers
[114] https://www.gov.uk/government/publications/bus-and-coach-security-recommended-best-practice
https://www.gov.uk/government/publications/security-guidance-for-goods-vehicle-operators-and-drivers
[115] http://assets.highwaysengland.co.uk/Commercial+Vehicles/Diesel+Spillages+Best+Practice+Guide.pdf
[116] https://www.gov.uk/guidance/securing-loads-on-hgvs-and-goods-vehicles
[117] https://www.gov.uk/government/publications/understanding-your-hgv-or-trailers-brake-test-report/understanding-your-hgv-or-trailers-brake-test-report
[118] https://www.gov.uk/check-vehicle-recall
[119] R v Rupal Patel [2006] EWCA Crim 2689
[120] 2009/530 Boomerang Travel Ltd
[121] Adamson v Waveney District Council [1997] 2 All ER 898, where the court was concerned with the grant of hackney carriage licence to 'a fit and proper person'

contrary to the purpose of the legislation to receive all spent convictions and then decide which ones to take into account;

- when asked to provide information, an enforcing authority should identify the issue to which the spent convictions would relate if they were admitted and then should not only limit disclosure to those convictions which are relevant but should also provide a covering note indicating in general terms the class, age and seriousness of each of those offences. This will assist the licensing authority to decide whether, once it has heard the applicant on the matter, it wishes to be informed of the details of the spent convictions so that it may treat them as material convictions;

- any advocate should indicate in general terms the class, age and seriousness of the offences in order to help a tribunal decide whether, once it has heard the applicant on the matter, it wishes to admit evidence of the convictions;

- it may be that only some of the spent convictions should be received and the applicant should be given an opportunity to persuade the tribunal that any spent convictions which have been disclosed are either irrelevant or should not prejudice the application because of their age, circumstances or lack of seriousness;

- the tribunal should come to its own dispassionate conclusion having regard to the interests of both the applicant and the public in whose interests the exceptional power to have regard to spent convictions is being exercised.

66. The Upper Tribunal has previously indicated that, in light of the statutory restrictions referred to above, it would be slow to accept that there are any circumstances in which a traffic commissioner may refer to spent convictions when considering loss of repute.[122] In *2012/034 Martin Joseph Formby trading as G & G Transport,* the Upper Tribunal indicated that, in applying paragraphs 1 - 5 of Schedule 3 to the 1995 Act, traffic commissioners must also consider whether Article 6 of Regulation (EC) No 1071/2009, which establishes *common rules concerning the conditions to be complied with to pursue the occupation of road transport operator* is met. Article 6 requires a Member State to implement a procedure for consideration of the repute of an operator or transport manager where convicted of a serious criminal offence or has incurred a penalty for one of the most serious infringements. Article 6(3) allows a margin of appreciation whereby Member States may provide for rehabilitation; this is achieved through the Rehabilitation of Offenders Act 1974.

67. Where the Rehabilitation of Offenders Act 1974 does not apply, for instance because of the length of sentence imposed, it is for the traffic commissioner to determine as a question of fact depending on the circumstances of each individual case, whether or not the commission of a particular offence remains a bar to the grant of an operator's licence.[123]

[122] 2000/055 Michael Leslie Smith trading as Mike Smith Transport
[123] 2012/034 Martin Joseph Formby trading as G&G Transport

DIRECTIONS

68. The Senior Traffic Commissioner for Great Britain issues the following Directions to traffic commissioners under section 4C(1) of the Public Passenger Vehicles Act 1981 (as amended) and by reference to section 1(2) of the Goods Vehicles (Licensing of Operators) Act 1995. These Directions are addressed to the traffic commissioners in respect of the approach to be taken by staff acting on behalf of individual traffic commissioners and dictate the operation of delegated functions in relation to good repute and fitness.

Basis of Directions

69. The difficulty in providing directions stems from the absence of a definition for 'good repute' or 'fitness' within the legislation. The Guidance above cannot provide a definitive list of all conduct which might impact on repute or fitness. Traffic commissioners must also decide when to exercise their discretion. The purpose of these Directions is to provide as much clarification as is possible and they should be read in conjunction with the attached Guidance which offers useful examples by way of illustration. The attached Annex 1 summarises those examples. It sets out the starting point for submissions, but the traffic commissioners can and might call for more information.

Submissions

70. If staff members find some adverse history, during the processing of an application, they will need to gather the relevant facts surrounding the case and present it to the traffic commissioner so that the commissioner can decide on the appropriate action. When compiling a submission, to a traffic commissioner, members of staff should:

- gather all relevant information;
- complete the template, provide facts, distinguishing information from evidence, and quote dates and licence number(s) if applicable, be precise and to the point;
- provide a recommendation which is fully supported by the relevant legislation.

71. The Senior Traffic Commissioner has identified the following instances where an operator/applicant should expect to provide evidence of their ability to manage an operator's licence:

- on initial application;
- on renewal of an operator's licence;
- at Public Inquiry.

72. Members of staff should refer to the Guidance for examples of conduct which might impact on an operator/applicant's fitness/repute. In general, traffic commissioners will be assisted by any information relating to the following matters:

- convictions taking account of the different application to individuals and whether it is a serious offence and/or a road transport offence;

- previous orders for revocation, curtailment or suspension of previous linked licences;
- previous linked licences where operations had ceased but instead of surrendering the operator does not seek the continuation of the licence;
- previous adverse history on the current licence to include warnings and any public inquiry history;
- prohibitions;
- fixed Penalty Notices[124];
- bankruptcy, sequestration, administration or liquidation cases;
- avoidance of debts ("phoenix" or "front" applications);
- late payments and non-payment of court orders, fines and/or fixed penalty notices;
- DVSA or Office of the Traffic Commissioner (OTC) inability to contact operator;
- abusive behaviour or non co-operation towards enforcement officers and/or members of OTC staff;
- failure to notify material and relevant changes;
- failure by a transport manager(s) to exercise continuous and effective responsibility;
- unauthorised use of a place as an operating centre;
- failure to fulfil a licence undertaking;
- the operator is no longer professionally competent or able to show the availability of sufficient finance.

73. The traffic commissioner will also be assisted by information of the steps taken by an operator/applicant to alleviate any of the above concerns and the efforts made to improve their knowledge. A sole trader, partner or director might demonstrate relevant training through attendance on an operator licence awareness course but in the case of a transport manager, a 2 day Certificate of Professional Competence refresher. Those courses would normally be provided by either:

- a trade association (e.g. Logistics UK/ RHA/ BAR/ CPT);
- a professional body (e.g IoTA/ CILT/ SOE/ IRTE);
- an approved examination centre offering the transport manager CPC qualification in goods transport; or
- a firm of solicitors (or their associated training organisation) with significant experience with road transport regulatory and compliance issues (defined as having represented road transport operators and/or transport managers in at least 20 public inquiries over the past two years).

74. There are some operators who are subject to other regulatory regimes where strict liability ("no fault") offences or other enforcement action might result. The numbers of incidents involved may be significant. To ensure a consistent approach the Senior Traffic Commissioner has identified the types of offence which should be notified:

[124] DVSA checks for emissions cheat devices including AdBlue emulators at roadside checks, which could result in the issue of a fine and the vehicle being taken off the road

- any transport related (e.g. construction and use[125], overloading, drivers' hours etc.) convictions for any director, transport manager or driver;
- any convictions under, for instance the New Road & Street Works Act 1991 or the Health and Safety at Work etc. Act 1974, resulting from an incident at a work site;
- any convictions for environmental offences, for instance section 3 Control of Pollution Act 1974, section 2 of the Refuse Disposal (Amenity) Act 1978, section 1 Control of Pollution (amendment) Act 1989, section 33 Environmental Protection Act 1990, regulation 38(1)or (2) of Environmental Permitting (England Wales) Regulations 2016 committed in relation to a waste operation;
- any other "no fault" offences (e.g. where a water company has taken control of unknown and unidentifiable sections of sewers and an environmental offence becomes apparent);
- in addition, any offences by employees who hold vocational licences such as offences for drink/drug driving, dangerous driving, death by dangerous driving, and mobile phone abuse must be notified to the Office of the Traffic Commissioner if the driver holds a vocational licence. PCV drivers' notifiable offences include sexual offences, dishonesty etc.

The Senior Traffic Commissioner has indicated that, where there is intervention by the Health and Safety Executive, traffic commissioners only need to be notified of formal enforcement rather than a Fee for Intervention (FFI). The Health and Safety Executive may refer any relevant incidents including workplace transport and in particular incidents relating to load security,[126] for consideration by the traffic commissioner.

Collisions with infrastructure

75. Vehicles striking bridges or other road infrastructure can pose a significant risk to occupants of those vehicles and other road users, amongst others. Such collisions also result in disruption to the road and rail networks, resulting in a negative economic impact on businesses, including Network Rail. The majority of collisions might be avoided through planning and driver training.

76. Traffic commissioners expect drivers, operators and transport managers to make use of the guidance that is publicly available on how to avoid bridge strikes. This includes useful guidance found at:

https://www.gov.uk/government/publications/prevention-of-bridge-strikes-good-practice-guide

77. As a result, when incidences are brought to the attention of a traffic commissioner they will wish to consider the culpability of the operator and transport manager and they may be called to attend a public inquiry. The driver can also expect to be called to a hearing and may face a period of suspension.[127]

[125] Section 42 of the Road Traffic Act 1988 for a failure to comply with construction and use requirements including those under The Road Vehicles (Construction and Use) Regulations 1986. Orders made under section 44 of the Road Traffic Act 1988 authorise the use of certain vehicles not complying with the Regulations such as the Road Vehicles (Authorisation of Special Types) (General) Order 2003

[126] See: https://www.hse.gov.uk/logistics/load-security.htm
https://publications.europa.eu/en/publication-detail/-/publication/30c7c1dc-f26e-44af-bd4c-2434b43edd7e

[127] See Statutory Guidance and Statutory Directions on Vocational Driver Conduct

General Changes Which Must Be Notified

Conviction of operator	within 28 days
Conviction of employee	within 28 days
Bankruptcy of operator/partner/Director	within 28 days
Liquidation/administration/receivership/company voluntary arrangement (CVA)	before order/appointment is made
Change in name or legal form of undertaking	within 28 days
Death of operator/partner	as soon as possible
Change of licence type	Application required as no authority until grant
Change in operating centre	Application required as no authority until grant
Change in address of establishment	within 28 days
Change of director	as soon as possible
Change of partner	as soon as possible
Change of transport manager	within 28 days
Change of maintenance contractor/arrangements	as soon as possible
Removal of vehicle/trailer	within 21 days[128]
Addition of vehicle/trailer	within 1 month if within the margin otherwise application required as no authority until grant

The Senior Traffic Commissioner considers that it would be reasonable to expect changes that alter the terms upon which a licence was granted, to be notified within 28 days.

Rehabilitation

78. Commissioners and their staff are specifically referred to the Guidance above, which sets out the provisions of the Rehabilitation of Offenders Act 1974 as they apply to proceedings before a traffic commissioner and the principles which can be drawn from the available case law. Spent convictions should not generally be referred to or taken into account in respect of an operator appearing before a public inquiry but the conduct itself might be relevant (see below). Care must be taken when recording and retaining the details of the spent convictions to ensure that when the commissioner or their staff become aware that they are in possession of information about spent convictions that only the commissioner and a senior member of the Office of the Traffic Commissioner have access to those spent convictions.

[128] Section 6(5) of Goods Vehicles (Licensing of Operators) Act 1995 provides that the number of trailers being used under an operator's licence at any one time may not exceed the maximum number specified in the licence. There is no requirement to specify individual trailers. Section 13 of the Haulage Permits and Trailer Registration Act 2018 allows for regulations to provide for the compulsory or voluntary registration of trailers. A failure to notify vehicle changes promptly can potentially impact on an operator's fitness where for example hired vehicles are left specified on the licence after being returned

79. The Police, Crime, Sentencing and Courts Act 2022 amends the rehabilitation period for England and Wales as follows:

Where on a conviction the sentence (or equivalent) imposed is:	The rehabilitation period begins on conviction and lasts for:	
	Adult	Offenders under 18
A custodial sentence of more than 4 years	The end of the period of 7 years beginning with the day on which the sentence (including any licence period) is completed	The end of the period of 42 months beginning with the day on which the sentence (including any licence period) is completed
A custodial sentence more than 1 year and up to, or consisting of, 4 years	The end of the period of 4 years beginning with the day on which the sentence (including any licence period) is completed	The end of the period of 2 years beginning with the day on which the sentence (including any licence period) is completed
A custodial sentence of 1 year or less	The end of the period of 12 months beginning with the day on which the sentence (including any licence period) is completed	The end of the period of 6 months beginning with the day on which the sentence (including any licence period) is completed
A fine	The end of 12 months beginning with the date of the relevant conviction	The end of 6 months beginning with the date of the relevant conviction
Compensation Order	The date on which the payment is made in full	
A relevant order (e.g. Conditional Discharge, Bind over to keep the peace, Hospital Order, Supervision or Care Order, Disqualification, disability, prohibition or other penalty - this list is not exhaustive)	The day provided for by or under the order as the last day on which the order is to have effect	

80. The Management of Offenders (Scotland) Act 2019[129] sets the rehabilitation period for Scotland as follows:

Where on a conviction the sentence (or equivalent) imposed is:	The rehabilitation period begins on conviction and lasts for:	
	Adult	Offenders under 18
A custodial sentence of more than 30 months up to and consisting of, 48 months	The term of the sentence plus 6 years	The term of the sentence plus 3 years
A custodial sentence more than 12 months and up to, or consisting of, 30 months	The term of the sentence plus 4 years	The term of the sentence plus 2 years
A custodial sentence of 12 months or less	The term of the sentence plus 2 years	The term of the sentence plus 1 year

[129] Due to be amended further by the Disclosure (Scotland) Act 2020 at a date in the future

A fine or compensation order	12 months	6 months

81. The convictions of corporate bodies are not subject to the Rehabilitation of Offenders Act 1974. Since section 4 of the Rehabilitation of Offenders Act 1974 states that a person who has become a rehabilitated person shall be treated for all purposes in law as though there has been no conviction against that person, no evidence is admissible in any proceedings to prove that conviction where it is "spent" and an individual cannot be questioned in any proceedings if the questions cannot be answered without referring to a "spent" conviction. This provision relates to proceedings before any judicial authority including a Tribunal, and as a result, includes proceedings before traffic commissioners. Commissioners and their staff should therefore satisfy themselves as to whether:

- the sentence imposed is not/excluded from rehabilitation under the Act;
- since the conviction and during the relevant rehabilitation period, there has not been a subsequent conviction and sentence which is excluded from rehabilitation.
- the sentence was served in full. (A sentence of imprisonment is deemed to have been served as at the time that the Order requires the offender to be released from prison).

82. Ultimately, when deciding whether to allow convictions and/or conduct to be considered, the traffic commissioner will take into account the evidence and circumstances of the case, balancing that conduct against other relevant material such as the operator's record. A traffic commissioner also has discretion to disregard other convictions, which are not spent, applying the principle of proportionality.

83. In relation to repute, whilst a "spent" conviction shall be disregarded in so far as the actual recorded conviction is concerned, the traffic commissioner can have regard to any other information which appears to relate to the individual's fitness to hold a licence (for example, a course of conduct which may be revealed by convictions for similar offences over a period of time, which demonstrates propensity). The final decision as to whether it may be relevant to the proceedings before the traffic commissioner and should, therefore be admitted notwithstanding that it is "spent", is a matter for the traffic commissioner alone. The traffic commissioner will need to be satisfied that there is no other way of doing justice in the case other than taking account of the spent conviction. Each case will be considered on its own individual merits. The Senior Traffic Commissioner has therefore directed that the following procedure be adopted:

A. When notification of a conviction is received within the Office of the Traffic Commissioner the caseworker must consider each conviction separately and determine as against the Senior Traffic Commissioner's Statutory Documents whether that conviction appears to be spent.

B. The caseworker should try to identify why the OTC was not notified sooner. They must identify if the conviction(s) relates to any other relevant conduct such as compliance with undertakings, whether it is similar to previous shortcomings and whether it is a most serious infringement. The caseworker must ask themselves is the spent conviction capable of relating to an issue which the traffic commissioner may have to decide.

C. If the spent conviction is capable of being relevant then reference to it must be included in a submission to the traffic commissioner identifying where possible the date of conviction, penalty and type of offence. The traffic commissioner should be asked to give a preliminary indication of whether the spent conviction might be admitted and whether to make a request for explanation or to identify the conviction in the calling in letter and invite representations in writing and/or at the hearing.

D. The traffic commissioner will then decide whether to seek further details and admit any of the spent convictions in light of representations from the operator or transport manager, having in mind not only the interests of the individual who has spent convictions but also the public in whose interests the exceptional powers are being exercised.

Most Serious Infringements

84. As stated above, Commission Implementing Regulation (EC) 2016/480 requires that Members States ensure that there is interconnectivity between the various national registers. Traffic commissioners may be referred to incidents where an operator and/or transport manager has been convicted of a *serious criminal offence* or has incurred a penalty within the European Union for a serious infringement of Community rules. Where there has been one or more 'most serious infringements' that must be considered by traffic commissioners for the purposes of Article 6(2)(a) relating to good repute and where the traffic commissioner determines that it is not proportionate to call to a public inquiry then the reasons must be fully recorded by the traffic commissioner.

Endorsements

85. Where an endorsable offence has been committed, call up letters and correspondence should refer to endorsements rather than convictions. Details of some driving offences may remain on a driving licence for longer than the 4 years which staff members are used to dealing with, for instance an endorsement for a drink or drugs related road traffic offence remains on a driving licence for 11 years. Another example might be where a court imposes a fine for travelling at excessive speed and endorses a licence. If it was committed, 8 years ago, it would be more than 5 years old, and the driver would be treated as rehabilitated. If, however, there was another similar offence 4 years earlier, both offences would strictly be disclosable under the provisions of the Rehabilitation of Offenders Act 1974.

86. Current practice by the Driver and Vehicle Licensing Agency is to hold endorsements for between 4 or 11 years depending on the offence, in line with section 45 of the Road Traffic Offenders Act 1988. It follows that information about disclosable endorsements which might be put before the criminal courts for the purposes of sentencing following similar offences may not be brought to the attention of the traffic commissioner.

Driver Certificate of Professional Competence (CPC)

87. Vocational bus and coach drivers have been required to hold a Driver's Certificate of Professional Competence since 10 September 2008 and vocational HGV

drivers from 10 September 2009.[130] The Vehicle Drivers (Certificates of Professional Competence) Regulations 2007/605 allow some specific exemptions, but they only apply in particular circumstances. Regulation 3(2)(g) replicates a 'tools of the trade' exemption in other legislation so that drivers of vehicles which are carrying equipment or material that will be used by that driver at the destination are not required to hold a Driver CPC provided that driving the vehicle is not the driver's main occupation. Where a driver is found to be driving and does not comply with the regulations then the traffic commissioner will require an explanation from the operator as well as the driver, and as appropriate, the transport manager about the steps taken to ensure that drivers of authorised vehicles have the necessary qualification. Failure by the operator to take the appropriate steps can result in regulatory action being taken against the operator.

Previous Decisions

88. Care needs to be taken before any weight is attached to a matter that may be regarded as stale where there is an inherent objective to achieve fairness. Sometimes the letter of the Act allows consideration of a conviction, but the spirit of the legislation suggests otherwise. As a general guideline, where the operator has appeared before a traffic commissioner[131] at a previous hearing or hearings, it is both fair and proper that previous decisions from earlier hearings are made available provided of course that the principles of the legislation are adhered to.[132]

Attempts to Avoid Liabilities

89. Not all legitimate businesses succeed at the first attempt. Companies can fail for any number of reasons and there are times when directors find their company can no longer trade. There is no legal prohibition to forming a new company from the remnants of a failed business. A "phoenix" company is where the assets of one limited company are moved to another legal entity (sometimes referred to as a 'pre-pack'[133]) but with no obligation to pay the failed company's debts. Often some or all of the directors remain the same. A director of a failed company can become a director of a new company unless he or she:

- is subject to a disqualification order or undertaking, or
- is personally adjudged bankrupt, or
- is subject to a bankruptcy restrictions order or undertaking.

90. These arrangements can allow a business to start again with the profitable elements of the failed business and are likely to seek to operate in the same sphere as its predecessor. In some cases, the new company has the same or a similar name to the failed business.

91. Some unscrupulous individuals seek to avoid responsibility for their liabilities by putting their companies into insolvency or use a Company Voluntary Arrangement (CVA) or Individual Voluntary Arrangement (IVA) to continue to

[130] Those who already held a licence at those dates were exempt until 10 September 2013 and 10 September 2014 respectively
[131] See Statutory Guidance on Delegations for the impact and limitations of delegated powers
[132] The Court of Appeal in AA (Somalia) and SSHD and AH (Iran) [2007] EWCA Civ 1040 approved of the approach taken by the Immigration Appeal Tribunal in SK (guidance on application of Devaseelan) Serbia & Montenegro [2004] UKIAT 00282 which offers persuasive law on the approach to be taken when rely on previous decisions
[133] See Statutory Guidance and Statutory Directions on Legal Entities

trade whilst insolvent. Once a company enters insolvency or liquidation proceedings, the creditors will only be paid in order of priority from whatever remaining company funds are still available. (Trade creditors often receive only a portion of the money owed, which can impact on their ability to trade, and they may feel pressured to agree to a voluntary arrangement.) The directors may therefore seek to transfer the assets of a failing company for below their market value before insolvency and reduce the funds available to creditors when the original company is declared insolvent. These tactics may result in an unfair competitive advantage over other operators.

92. Whilst the Insolvency Act 1986 has made it more difficult for directors to do this by introducing stricter rules over the insolvency process and requiring liquidators to obtain the best price for a business and its assets there are still a number of unscrupulous individuals who still seek to avoid their legal responsibilities. Traffic commissioners and their staff are reminded that it is an offence for a director of a company, which has gone into insolvent liquidation, to be a director of a company with the same or a similar name, or concerned in its management, without the leave of a court etc. The liquidator can also take action to recover funds where the failed company has entered into a sale at a lower than market value at a time when the company was unable to pay its debts.

93. A phoenix company may be a legitimate business, but traffic commissioners will wish to satisfy themselves as to any application which has the characteristics of a phoenix application. Save in exceptional circumstances the directors of a company that goes into administration will have been aware that it was in financial difficulty for a sufficient period of time to enable them to inform the traffic commissioner of the material change in the company's financial position prior to administration.[134] A failure to inform the traffic commissioner of a material change, including for instance a CVA, may lead to adverse conclusions being drawn against the fitness of those directors. Once an Administrator is appointed s/he must decide whether or not to carry on the road haulage business of the company. If s/he decides not to do so s/he should take immediate steps to surrender the licence and to return the discs for the authorised vehicles. Operators who fail to surrender a licence when they cease to operate will raise questions as to their fitness to hold a licence on any future application.

94. Members of staff acting on behalf of individual traffic commissioners should scrutinise any application carefully to find out why the previous company failed and to ensure that directors are not serial abusers of the phoenix company arrangements. They might for instance search the information available from Companies House and/or seek to obtain a status report from a credit ratings agency. The official receiver or insolvency practitioner has a duty to investigate the affairs of companies in compulsory liquidation and to report evidence of criminal offences to a prosecuting agency. Staff should attempt to obtain a copy of the relevant report and must refer it to the traffic commissioner where they have concerns about the application. Financial standing refers to the levels required for an established business. Restricted Goods Licences are required to have a sum available in order to support maintenance. Where an applicant or existing operator can only demonstrate the minimum sum this might prompt further questions about the fitness of that applicant or operator to meet the other licence requirements and the basic expenses involved in running a business.

[134] See Statutory Guidance and Statutory Directions on Legal Entities

Transport Manager Declarations

95. In October 2011 transport managers were requested to complete and return a questionnaire in order to populate the national register. Some operators used this opportunity to change the transport manager details without making an application as they were required to do. The questionnaire specifically required the individual transport manager to only list those licences for which they had been *authorised*. Staff should be alive to this risk when making checks against the records. To rely on an acquired rights certificate the individual needs to have continuously managed a transport undertaking for the period of 10 years before December 2009. If there has been a false declaration this will need to be referred to the traffic commissioner to consider whether or not to take regulatory action in respect of the named CPC holder and/or the operator. A similar approach should be taken where the self-service facility has been used and there is no subsequent application lodged.

ANNEX 1 - STARTING POINT FOR SUBMISSIONS

<table>
<tr><th colspan="2">Examples of conduct which might be relevant (not an exhaustive list)</th></tr>
<tr><td colspan="2">• Abusive behaviour, dishonesty or lack of co-operation towards DVSA and/or other enforcement officers and/or the traffic commissioner or OTC staff
• Deliberate attempts to circumvent the operator licensing system
• Inability of DVSA and/or other enforcement officers or OTC to contact operator</td></tr>
<tr><td colspan="2">• Production of false documents to DVSA or any other any enforcement agency or the traffic commissioner or OTC staff
• Loan of operator licence and/or licence discs
• Use of out of date or forged operator licence and/or discs
• Previous or current unauthorised operation or operation in excess of current authority</td></tr>
<tr><td colspan="2">• Previous revocation, suspension or curtailment of licence within the last 5 years
• Previous warnings by a traffic commissioner within the last 5 years
• Failure to comply with a statutory or other recognised Code of Practice within the last 5 years
• Failure to comply with a civil penalty within the last 5 years
• Tax evasion of any kind including non-payment of or avoidance of Vehicle Excise Duty, fuel tax and HMRC payments re employee tax and National Insurance contributions within the last 5 years</td></tr>
<tr><td colspan="2">Bankruptcy, sequestration, administration or liquidation cases within the last 3 years</td></tr>
<tr><td colspan="2">Unfair commercial advantage</td></tr>
<tr><td colspan="2">Failure to declare relevant previous conduct</td></tr>
<tr><td colspan="2">Failure by transport manager/s to exercise continuous and effective responsibility</td></tr>
<tr><td>Failure to notify material changes regarding</td><td>• Conviction of operator and/or employee
• Bankruptcy of operator/partner/director within the last 3 years
• Liquidation/administration/receivership within the last 3 years
• Death of operator/partner/director
• Change of legal entity/Change in operation requiring change of licence type
• Change of operating centre
• Change of director
• Change of partner
• Change of transport manager
• Change in maintenance contractor/arrangements</td></tr>
<tr><td>Convictions (notifiable)</td><td rowspan="2">• Section 53 of the Road Traffic Act 1988 (plating certificates and goods vehicle test certificates).
• An offence in relation to a goods vehicle relating to the maintenance of vehicles in a fit and serviceable condition, or overloading, or the licensing of drivers
• A drivers' hours’ offence</td></tr>
<tr><td></td></tr>
</table>

	• Sections 173 or 174 of the Road Traffic Act 1988 (forgery, false statements or the withholding of information) in relation to international permit. • Section 3 of the Control of Pollution Act 1974. • Section 2 of the Refuse Disposal (Amenity) Act 1978. • Section 1 of the Control of Pollution (Amendment) Act 1989. • Section 33 of the Environmental Protection Act 1990 • Environmental Permitting (England Wales) Regulations 2016 • Contravention to a provision prohibiting or restricting waiting vehicles under the Road Traffic Regulation 1984 or a relevant traffic regulation order. • An offence under the Goods Vehicles (Licensing of Operators) Act 1995, the Transport Act 1968 or the Road Traffic Act 1960 relating to licences or means of identification • An offence relating to section 13 of the Hydrocarbon Oil Duties Act 1979 (unlawful use of rebated fuel oil in relation to goods vehicles) • An offence under section 74 of the Road Traffic Act 1988 (duty to keep inspection records in relation to goods vehicles) • An offence under section 42 of the Armed Forces Act 2006 when the corresponding offence under the law of England and Wales is an offence mentioned in paragraph 5 of Schedule 2
Convictions (other offences)	• Individual: Is there more than one conviction for a serious offence or has the individual been convicted of road transport offences? • road transport offence in UK or corresponding offence outside the UK • serious offence – where one of the following punishments has been imposed: Imprisonment exceeding three months; A fine exceeding level 4 on the standard scale; A community order (or equivalent) requiring unpaid work for more than 60 hours or a community payback order requiring unpaid work, or unpaid work and other activity, to be undertaken for more than 60 hours; Any punishment outside the UK corresponding to the above.
• Drivers' hours and tachograph offences, convictions or fixed penalty notices within the last 5 years	

- Prohibitions and/or use of vehicles whilst still under prohibition within the last 5 years
- Overloading offences or prohibitions within the last 5 years
- Use of vehicle/s whilst uninsured or without MOT (i.e. an MSI) within the last 5 years
- Use of vehicle/s with fraudulent emissions systems

ANNEX 2 - RETAINED EU LEGISLATION

Regulation 5 of the Road Transport Operator Regulations 2011 states that a standard licence constitutes an authorisation to engage in the occupation of road transport operator for the purposes of:

Regulation (EC) No 1071/2009 establishing common rules concerning conditions to be complied with to pursue the occupation of road transport operator repealed Council Directive 96/26 EC and applicable from 4th December 2011

Article 3 - Requirements for engagement in the occupation of road transport operator

1. Undertakings engaged in the occupation of road transport operator shall:

(b) be of good repute;

(d) have the requisite professional competence.

Article 6 - Conditions relating to the requirement of good repute

1. Subject to paragraph 2 of this Article, the Minister must determine the conditions to be met by undertakings and transport managers in order to satisfy the requirement of good repute laid down in Article 3(1)(b).

In determining whether an undertaking has satisfied that requirement, the competent authority may consider the conduct of the undertaking, its transport managers and any other relevant person as may be determined by the competent authority. Any reference in this Article to convictions, penalties or infringements shall include convictions, penalties or infringements of the undertaking itself, its transport managers and any other relevant person as may be determined by the competent authority.

The conditions referred to in the first subparagraph shall include at least the following:

(a) that there be no compelling grounds for doubting the good repute of the transport manager or the transport undertaking, such as convictions or penalties for any serious infringement of national rules in force in the fields of:

(i) commercial law;
(ii) insolvency law;
(iii) pay and employment conditions in the profession;
(iv) road traffic;
(v) professional liability;
(vi) trafficking in human beings or drugs; and

(b) that the transport manager or the transport undertaking have not been convicted of a serious criminal offence or incurred a penalty for a serious infringement relating in particular to:

(i) the driving time and rest periods of drivers, working time and the installation and use of recording equipment;

(ii) the maximum weights and dimensions of commercial vehicles used in international traffic;
(iii) the initial qualification and continuous training of drivers;
(iv) the roadworthiness of commercial vehicles, including the compulsory technical inspection of motor vehicles;
(v) access to the market in international road haulage or, as appropriate, access to the market in road passenger transport;
(vi) safety in the carriage of dangerous goods by road;
(vii) the installation and use of speed-limiting devices in certain categories of vehicle;
(viii) driving licences;
(ix) admission to the occupation;
(x) animal transport.

2. For the purposes of point (b) of the third subparagraph of paragraph 1:

(a) where the transport manager or the transport undertaking has in the United Kingdom, or in one or more Member States, been convicted of a serious criminal offence or incurred a penalty for one of the most serious infringements of rules as set out in Annex 4, the competent authority must carry out in an appropriate and timely manner a duly completed administrative procedure, which may include, if appropriate, a check at the premises of the undertaking concerned.

The procedure shall determine whether, due to specific circumstances, the loss of good repute would constitute a disproportionate response in the individual case. Any such finding shall be duly reasoned and justified.

If the competent authority finds that the loss of good repute would constitute a disproportionate response, it may decide that good repute is unaffected. In such case, the reasons shall be recorded in the national register. The number of such decisions shall be indicated in the annual reports which the traffic commissioners make under section 55 of the Public Passenger Vehicles Act 1981.

If the competent authority does not find that the loss of good repute would constitute a disproportionate response, the conviction or penalty shall lead to the loss of good repute;

(b) the competent authorities must take into account any information on the categories, types and degrees of seriousness of any infringements referred to in Annex IV and Commission Regulation (EU) 2016/403, including information received from Member States, when setting the priorities for checks pursuant to Article 12(1).

Additional measures, designed to amend non-essential elements of this Regulation by supplementing it and which relate to this list, may be adopted by the Minister.

To this end, the Minister may by regulations:

(i) lay down the categories and types of infringement which are most frequently encountered;

(ii) define the degree of seriousness of infringements according to their potential to create a risk of fatalities or serious injuries; and

(iii) provide the frequency of occurrence beyond which repeated infringements shall be regarded as more serious, by taking into account the number of drivers used for the transport activities managed by the transport manager.

EU ANNEX IV

Most serious infringements for the purposes of Article 6(2)(a)

1. (a) Exceeding the maximum 6-day or fortnightly driving time limits by margins of 25 % or more.

   (b) Exceeding, during a daily working period, the maximum daily driving time limit by a margin of 50 % or more without taking a break or without an uninterrupted rest period of at least 4.5 hours.

2. Not having a tachograph and/or speed limiter, or using a fraudulent device able to modify the records of the recording equipment and/or the speed limiter or falsifying record sheets or data downloaded from the tachograph and/or the driver card.

3. Driving without a valid roadworthiness certificate if such a document is required under Community law and/or driving with a very serious deficiency of, inter alia, the braking system, the steering linkages, the wheels/tyres, the suspension or chassis that would create such an immediate risk to road safety that it leads to a decision to immobilise the vehicle.

4. Transporting dangerous goods that are prohibited for transport or transporting such goods in a prohibited or non-approved means of containment or without identifying them on the vehicle as dangerous goods, thus endangering lives or the environment to such extent that it leads to a decision to immobilise the vehicle.

5. Carrying passengers or goods without holding a valid driving licence or carrying by an undertaking not holding a valid Community licence.

6. Driving with a driver card that has been falsified, or with a card of which the driver is not the holder, or which has been obtained on the basis of false declarations and/or forged documents.

7. Carrying goods exceeding the maximum permissible laden mass by 20 % or more for vehicles the permissible laden weight of which exceeds 12 tonnes, and by 25 % or more for vehicles the permissible laden weight of which does not exceed 12 tonnes.

ANNEX 3 - GUIDELINES ON SPORTING EVENTS IN ENGLAND & WALES

Carriage of passengers to designated association football matches

Legal Requirements

PSV operators are reminded of the terms of section 1(1) of the Sporting Events (Control of Alcohol) Act 1985, as amended by the Public Order Act 1986, which prohibits the carriage of alcohol on a PSV that is being used for the principal purpose of carrying passengers for the whole or part of a journey to or from a designated sporting event.

PSV operators are also reminded of the terms of section 2A of the Sporting Events (Control of Alcohol) Act 1985, as amended by the Public Order Act 1986, which prohibits the possession of a firework or an article or substance, whose main purpose is the emission of a flare, smoke or a visible gas, at any time during the period of, while entering or trying to enter a designated sporting event.

A ‘designated sporting event’ generally means certain association football matches, whether national or international, as defined in Schedule 2 of the Sports Grounds and Sporting Events (Designation) Order 2005 (as amended). It is an offence for an operator of a PSV (or his servant or agent) to knowingly cause or permit the carriage of alcohol on journeys to which these Regulations apply.

Voluntary Guidelines on the carriage of passengers to association football matches - England and Wales

For many years the PSV industry has complied with a voluntary code of practice whereby operators taking passengers to a designated sporting event meet certain guidelines set by the police. This has worked very well, and it has seldom been necessary for a traffic commissioner to take any further action against an operator who has contravened the guidelines. Nevertheless the police in England and Wales are concerned that incidents of football related violence and disorder do still occur.

The guidelines were drafted in conjunction with the Confederation of Passenger Transport (CPT), the Crown Prosecution Service (CPS), the Coach Operators Federation (COF) and the Association of Transport Coordinating Officers (ATCO) and are set out below:

a. PSV operators taking bookings from groups of supporters are to notify the relevant Dedicated Football Officer (DFO), at least 48 hours before the event, of the number of supporters expected to travel, the number of vehicles booked, the name and the contact number for the person who made the booking. Once available the operator must also notify the VRM and driver’s name to the relevant Dedicated Football Officer.

   For the purpose of these guidelines, the relevant Dedicated Football Officer means the DFO for the club that the fans are travelling to support. For example, West Ham are playing a premier league game away to Leeds United. Operator A has been contracted to transport West Ham fans from Romford and the relevant DFO is the DFO for West Ham. Operator B has been contracted to carry Leeds

United fans to the game from Barrow in Furness. In this case the relevant DFO is the DFO for Leeds.

b. Vehicles are not to stop within 10 miles of the venue either enroute to, or on departure from the event unless prior agreement is obtained from the relevant Dedicated Football Officer.

c. Unless directed by a police officer, PSVs may stop at premises where intoxicating liquor is sold only if it is sold ancillary to a substantial meal. Prior agreement for meal stops where alcohol is available should be sought from the operator's relevant Dedicated Football Officer.

d. PSVs are to arrive at the venue no earlier than two hours before and not later than one hour before the scheduled start of the game, unless otherwise directed by police.

e. PSVs are not to set down or uplift passengers at any unauthorised locations without prior permission of the police.

f. PSVs must leave the venue within 30 minutes of the finish of the event, unless directed otherwise by a police officer or ground safety officer.

g. PSV operators are to follow all reasonable instruction given by police or enforcement officers at all times. This includes, but is not limited to, routing and stopping arrangements.

h. Intoxicating liquor, flares and similar pyrotechnics, must not be carried on PSVs travelling to or from designated grounds. Operators will draw hirers' attention to the requirements of the law, and drivers shall, as far as reasonably practical, supervise boarding passengers and check that they are not obviously carrying intoxicating alcohol, flares and similar pyrotechnics. Drivers will not be expected to carry out baggage or body searches, nor will they be expected to confiscate alcohol or to remove passengers without police assistance. Operators may add a condition of entry to the PSV that a voluntary search may be undertaken.

i. PSV operators are to notify the Dedicated Football Officer at the destination upon arrival at an away football ground, of any chanting demonstrating hostility based on race, ethnicity religion or beliefs, sexual orientation, disability, and transgender identity or chanting of an otherwise grossly offensive or inflammatory nature which had taken place during the journey to the ground.

j. PSV operators are to have established safeguarding policies when carrying persons under the age of 18 years old. This is to include arrangements for the nomination of at least one responsible adult for the minors carried.

Operators are expected to comply with these guidelines on a voluntary basis. However if the police inform the traffic commissioner of any failure on an operator's part to comply with them the traffic commissioner will be likely to apply them as a formal condition to that operator s licence under the authority of Section 16(3) of the Public Passenger Vehicles Act.

Relevant Legislation

Section 1(1) of the Sporting Events (Control of Alcohol) Act 1985, as amended by the Public Order Act 1986,

1 Offences in connection with alcohol on coaches and trains.

(1)This section applies to a vehicle which—

(a) is a public service vehicle or railway passenger vehicle, and

(b) is being used for the principal purpose of carrying passengers for the whole or part of a journey to or from a designated sporting event.

(2) A person who knowingly causes or permits intoxicating liquor to be carried on a vehicle to which this section applies is guilty of an offence—

(a) if the vehicle is a public service vehicle and he is the operator of the vehicle or the servant or agent of the operator, or

(b) if the vehicle is a hired vehicle and he is the person to whom it is hired or the servant or agent of that person.

(3) A person who has intoxicating liquor in his possession while on a vehicle to which this section applies is guilty of an offence.

(4) A person who is drunk on a vehicle to which this section applies is guilty of an offence.

(5) In this section “public service vehicle” and “operator” have the same meaning as in the Public Passenger Vehicles Act 1981.

1A Alcohol on certain other vehicles.

(1) This section applies to a motor vehicle which—

(a) is not a public service vehicle but is adapted to carry more than 8 passengers, and

(b) is being used for the principal purpose of carrying two or more passengers for the whole or part of a journey to or from a designated sporting event.

(2) A person who knowingly causes or permits intoxicating liquor to be carried on a motor vehicle to which this section applies is guilty of an offence—

(a) if he is its driver, or

(b) if he is not its driver but is its keeper, the servant or agent of its keeper, a person to whom it is made available (by hire, loan or otherwise) by its keeper or the keeper’s servant or agent, or the servant or agent of a person to whom it is so made available.

(3) A person who has intoxicating liquor in his possession while on a motor vehicle to which this section applies is guilty of an offence.

(4) A person who is drunk on a motor vehicle to which this section applies is guilty of an offence.

(5) In this section— "keeper", in relation to a vehicle, means the person having the duty to take out a licence for it under **[**the Vehicle Excise and Registration Act 1994**]**, "motor vehicle" means a mechanically propelled vehicle intended or adapted for use on roads, and "public service vehicle" has the same meaning as in the Public Passenger Vehicles Act 1981.**]**

Section 2A of the Sporting Events (Control of Alcohol) Act 1985, as amended by the Public Order Act 1986

2A Fireworks etc.

(1)A person is guilty of an offence if he has an article or substance to which this section applies in his possession—

(a) at any time during the period of a designated sporting event when he is in any area of a designated sports ground from which the event may be directly viewed, or

(b) while entering or trying to enter a designated sports ground at any time during the period of a designated sporting event at the ground.

(2)It is a defence for the accused to prove that he had possession with lawful authority.

(3)This section applies to any article or substance whose main purpose is the emission of a flare for purposes of illuminating or signalling (as opposed to igniting or heating) or the emission of smoke or a visible gas; and in particular it applies to distress flares, fog signals, and pellets and capsules intended to be used as fumigators or for testing pipes, but not to matches, cigarette lighters or heaters.

(4)This section also applies to any article which is a firework.**]**

The Sports Grounds and Sporting Events (Designation) Order 2005

Article 2(1) and 2(2) of Schedule 2:

1. Association football matches in which one or both of the participating teams represents a club which is for the time being a member (whether a full or associate member) of the Football League, the Football Association Premier League, the Football Conference National Division, the Scottish Football League or Welsh Premier League, or whose home ground is for the time being situated outside England and Wales, or represents a country or territory.

2. Association football matches in competition for the Football Association Cup (other than in a preliminary or qualifying round).

Article 2(3) of Schedule 2:

Association football matches at a sports ground outside England and Wales in which one or both of the participating teams represents a club which is for the time being a member (whether a full or associate member) of the Football League, the Football Association Premier League, the Football Conference National division, the Scottish Football League or Welsh Premier League, or represents the Football Association or the Football Association of Wales.