

**DIGEST of DECISIONS on APPEAL  
from  
TRAFFIC COMMISSIONERS**

**(including Chronological List of Decisions)**

**and**

**Links to the relevant Acts, Rules and Regulations in  
relation to those appeals**

**Includes decisions up to and including 31 May 2023**

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## Introduction

This Digest of decisions in relation to appeals from Traffic Commissioners has been produced in-house in order to assist Tribunal users and will be regularly updated. The text directly refers only to decisions from 2000 onwards, all of which are available on-line. All underlined decisions are hyperlinked and may be accessed as directed or by right clicking and then selecting “open hyperlink”.

There are currently **three** online databases where decisions are available to download. For decisions between 25/02/2000 and 18/06/2015, go to [transportappeals.decisions.tribunals.gov.uk](https://transportappeals.decisions.tribunals.gov.uk). For decisions between 09/10/2009 and 23/12/2016, go to [administrativeappeals.decisions.tribunals.gov.uk](https://administrativeappeals.decisions.tribunals.gov.uk). For decisions from 01/01/16 onwards, go to [gov.uk/administrative-appeals-tribunal-decisions](https://gov.uk/administrative-appeals-tribunal-decisions). As you can see there is some overlap between the databases, therefore some decisions may appear in more than one database. Since April 2022, decisions are also published on the National Archives [Find Case Law](https://www.nationalarchives.gov.uk/FindCaseLaw) website.

Please note in the [transportappeals.decisions.tribunals.gov.uk](https://transportappeals.decisions.tribunals.gov.uk) database, it is necessary to enter four numbers for the year and three for the decision – thus to obtain e.g. 2004/23 RJ Mortimer the number 2004 must be entered in full as the year and 023 for the appeal number.

Pre-2000 decisions are available from the Upper Tribunal (Administrative Appeals Chamber) office and an explanation of their numbering is given at the start of [Part Two – Chronological List of Decisions](#). This contains details of hearing dates, chairmen and key words: for explanation also see start of Part Two below.

It should be noted that for the years 2000-2002 the case number preceded the year number: from 2003 onwards, this was reversed. For consistency, in the text of the Digest the year number has been put first; but the original numbering has been retained in quotations and in the Chronological List.

The Digest is necessarily selective. Decisions are grouped by subject and inevitably there is overlap between chapters. Not all decisions of the Tribunal are included. However, all decided cases are listed in the Chronological List. Summaries of cases should not be relied upon: the decision itself should be considered if reference to it is to be made at a hearing. References to decisions prior to 2000 will be discouraged by the Tribunal, unless no later decision deals with the point. In any event, most appeals turn on their own facts and reliance on excessive authority is to be deprecated.

Since the post-1999 decisions can easily be obtained online, with the full title then being apparent, references are in abbreviated form, but with sufficient detail to enable identification. Note that “TC” is used to describe the decision-maker throughout, with no distinction being made between a traffic commissioner or a deputy traffic commissioner unless expressly stated. “PI” stands for public inquiry. The following abbreviations are used for legislation (all as amended):

- 1981 Act – Public Passenger Vehicles Act 1981
- 1985 Act – Transport Act 1985
- 1986 Regulations – Public Service Vehicles (Registration of Local Services) Regulations 1986
- 1988 Regulations - Public Service Vehicles (Registration of Local Services) Regulations 1988
- 1995 Act – Goods Vehicles (Licensing of Operators) Act 1995
- 1995 GVLO Regs – Goods Vehicles (Licensing of Operators) Regulations 1995
- 1995 PSVOL Regs – Public Service Vehicles (Operators’ Licences) Regulations 1995

- 1999 Regulations - Public Service Vehicles (Enforcement Powers) Regulations 1999
- 2000 Act – Transport Act 2000
- 2001 Act – Transport (Scotland) Act 2001
- 2001 Regs – Goods Vehicles (Enforcement Powers) Regulations 2001
- 2008 Rules - The Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2698/2008) (As amended)
- 2009 Regs – Public Service Vehicles (Enforcement Powers) Regulations, (SI 2009/1964)
- 2010 Act - Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010

All these are available at [www.legislation.gov.uk](http://www.legislation.gov.uk). But it is important to bear in mind that they have not always been kept up to date.

2009 EC Regulations can be found via the following links

1071/2009: “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”

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:300:0051:0071:EN:PDF>

1072/2009: “On common rules for access to the international road haulage market”

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:300:0072:0087:EN:PDF>

1073/2009: “On common rules for access to the international market for coach and bus services and amending Regulation (EC) No. 561/2006”

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:300:0088:0105:EN:PDF>



PART ONE: Appeals from Traffic Commissioners & the Department for Infrastructure in Northern Ireland (DFI)

## Chapter 1 Traffic Commissioners & DFI

### 1. Appointment and Powers

Traffic Commissioners are appointed by the Secretary of State for Transport under a power granted by section 4 of the Public Passenger Vehicles Act 1981, (“the 1981 Act”). Their powers, (to grant or refuse applications for operator’s licences, to attach conditions to the grant of an operator’s licence, to revoke, suspend or curtail operator’s licences, to make findings in relation to Transport Managers, to disqualify operators, directors and Transport Managers, to make regulations under section 7 of the Transport Act 1985, (“the 1985 Act”) and to order the return of an impounded vehicle), are those set out by Parliament in primary or secondary legislation. Traffic Commissioners have no other powers. Their jurisdiction covers the whole of Great Britain.

### 2. Senior Traffic Commissioner

Section 4A of the 1981 Act requires the Secretary of State to appoint one of the Traffic Commissioners as ‘The Senior Traffic Commissioner’. The Senior Traffic Commissioner has the power to deploy TCs in accordance with s. 4B of the 1981 Act. He or she also has the power to give guidance and general directions in accordance with section 4C of the 1981 Act.

The power to give guidance includes guidance as to the meaning and operation of any enactment, the circumstances in which and the manner in which a TC should exercise any power to impose any sanction or penalty and the matters which a TC should or should not take into account.

Where guidance is relied on in any particular decision it will be for the Tribunal to decide whether or not the guidance is correct. Where guidance has not been followed it will be for the Tribunal to consider whether or not the reasons given for not following the guidance justify that course.

The guidance issued by the STC under section 4C can be found at:

<https://www.gov.uk/government/collections/senior-traffic-commissioners-statutory-guidance-and-statutory-directions>

See [Coach Hire Surrey Ltd and Paul Jones v Traffic Commissioner for the London and South East Traffic Area and Secretary of State for Transport \[2020\] EWCA Civ 1706](#) on distinction between “STC guidance” and “STC general directions”.

In [UA-2022-001227-T Lineage UK Transport Ltd](#), the Tribunal held Statutory Document 10 was compliant with the Regulator’s Code (made pursuant to section 22 of the Legislative and Regulatory Reform Act 2006). The Tribunal did not see that the Code added anything to the law relating specifically to regulation of heavy good vehicles and public passenger vehicles (paragraph 42). See also [Midland Container Logistics Limited and James Donlon D K Barnsley & Sons Ltd](#) T/2018/20 and T/2018/28 where the Tribunal found Traffic Commissioners to be compliant with the Regulator’s Code (paragraphs 51-52).

### 3. Independence

In [Nolan Transport v VOSA & Secretary of State for Transport T/2011/60](#) (see paragraphs 228-231) “it was made very clear on behalf of the Secretary of State that the independence of Traffic Commissioners is recognised, valued and considered to be a matter of great importance. The Tribunal shares those views”.

The position in Northern Ireland was considered at paragraph 51 of: [NT/2015/32 Mark Lyons t/a Lyons Haulage](#)

### 4. Framework Document

The role of Traffic Commissioners and the relationship between Traffic Commissioners, the Department for Transport and VOSA is set out in a Framework Document, which can be found at:

<https://www.gov.uk/government/publications/framework-document-for-the-traffic-commissioners-and-department-for-transport-including-its-agencies>

### 5. DFI

In Northern Ireland applications for Goods Vehicle Operator’s licences are made to the Department for Infrastructure (DFI), under the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010, (“the 2010 Act”) which can be found at:

<http://www.legislation.gov.uk/nia/2010/2/contents>

In practice powers similar to those conferred on Traffic Commissioners are exercised by ‘The Traffic Regulation Unit’ (“TRU”), which forms part of the DFI.

[NT/2021/11 Trevor Cathers and Trevor Cathers Ltd](#) sets out the significance of the role and function of the TRU and its Head (paragraphs 16-21)

Further information about the TRU can be found at:

<https://www.infrastructure-ni.gov.uk/articles/transport-regulation-unit>

Section 35 of the 2010 Act provides for a right to appeal to the Upper Tribunal in similar terms to the right to appeal against decisions made by Traffic Commissioners.

For a summary of the position in relation to Northern Ireland see paragraphs 3-10 of the decision in the appeal of:

[NT/2013/52 & 53 Fergal Hughes v DOENI & Perry McKee Homes Ltd v DOENI](#)

The decisions set out in the Chapters which follow will apply to appeals from decisions made in Northern Ireland unless it can be shown that the legislation applying in Northern Ireland differs in a material respect from that which applies in Great Britain. Similarly decisions on appeal from DFI will apply in GB unless there are material differences in the provisions under consideration.

## Chapter 2 The Requirement to hold an Operator's Licence

### 1. Heavy Goods Vehicles

Section 2(1) of the 1995 Act provides that:

“Subject to subsection (2) and section 4, no person shall use a goods vehicle on a road for the carriage of goods-

(a) for hire or reward, or

(b) for or in connection with any trade or business carried on by him, except under a licence issued under this Act: and in this Act such a licence is referred to as an ‘operator’s licence’.”

In [UA-2021-002165-T Connor Construction \(South West\) Ltd](#), the appellant routinely was using the VOL system to swap vehicles on and off the licence. The Tribunal rejected the appellant's contention that a vehicle which is not being driven on the road was not in use on a road for the purposes of section 2 and did not need to be specified on the licence.

38. In light of the above we accept the argument of Mr Lewin to the effect that a vehicle which is utilised as a commercial vehicle for the purposes of the business which an operator runs under a licence, is being used for the carriage of goods for hire or reward or in connection with any trade or business carried on by the operator even if that vehicle is not actually being physically driven for such purposes at any specific point in time. We reject the narrow interpretation advanced on behalf of the appellant in that regard. Further, we emphatically reject the notion that the near continuous specifying and de-specifying of vehicles is an appropriate way for an operator to conduct its business. Being in possession of a fleet of vehicles considerably in excess of the licence authorisation and then drawing down vehicles to use as and when required, as pointed out above, undermines at least two of the core requirements of the regulatory regime, namely those which relate to financial standing and operating centres. An operator which conducts its business in this way, absent exceptionally thorough oversight, runs the risk of using on a public highway a vehicle not specified on the licence and/or using one beyond the specified interval of its periodic maintenance inspection.

There are various exemptions from the general rule in section 2(1) some of which were considered in [Nolan Transport v VOSA & Secretary of State for Transport T/2011/60](#) see [Chapter 16 International Issues](#)

The Tribunal also considered temporary exemptions under section 4 in [UA-2021-002165-T Connor Construction \(South West\) Ltd](#), rejecting a submission that there was "special need" for the exemption in the circumstances of the case, noting that "in considering the application for an exemption, the TC was not required to ask himself whether good reason for the previous breach had been given. He was required to look at the current situation and ask himself, amongst other things, whether there was on the evidence before him a genuine emergency to be dealt with or some other special need to be met in the particular circumstances of the case. So he was required to take a forward looking approach and was not looking backwards or asking whether previous failures were explainable or explicable. Further he was right to take the view that

Section 4 of the Act and the requirement for there to be an emergency or a special need meant a high threshold was set" (paragraph 27).

"Recovery vehicles" are exempt (Regulation 33 and paragraph 27 of Schedule 3 to the Goods Vehicle (Licensing of Operators) Regulations 1995). In [T/2020/20 Parker Body Repairs Ltd](#), the Upper Tribunal held that *recovery* does not include *return* of a repaired vehicle to the owner – see paragraph 25. The Upper Tribunal also rejected an argument that, given the operator did not levy a charge for returning a repaired vehicle, there was no "carrying goods for hire or reward". The Upper Tribunal found the better view on the evidence was that the operator was providing an overall or "all in" service and an amount was charged for that overall service – see paragraph 30.

Sections 1 and 13 of the 1995 Act give Traffic Commissioners the power to grant an HGV operator's licence.

Section 2(5) makes it a summary offence punishable with a fine not exceeding level 5 on the standard scale to use a vehicle in contravention of section 2.

## 2. Public Service Vehicles

Section 1(1) of the 1981 Act provides that:

"Subject to the provisions of this section, in this Act 'public service vehicle' means a motor vehicle (other than a tramcar) which-

- (a) being a vehicle adapted to carry more than eight passengers, is used for carrying passengers for hire or reward; or
- (b) being a vehicle not so adapted, is used for carrying passengers for hire or reward at separate fares in the course of a business of carrying passengers".

For the meaning of 'adapted' see [Chapter 15 Public Service Vehicles](#) and [T/2012/53 Clayton Car Sales Ltd](#)

Section 12(1) of the 1981 Act provides that:

"A public service vehicle shall not be used on a road for carrying passengers for hire or reward except under a PSV operator's licence granted in accordance with the following provisions of this Part of this Act".

Section 12(2) gives the relevant Traffic Commissioner power to grant a PSV operator's licence.

Various exemptions to this general rule are set out in the 1981 Act.

Section 12(5) makes it a summary offence punishable with a fine not exceeding level 4 on the standard scale to use a vehicle in contravention of s. 12(1).

The word "road" in the 1981 and 1995 Acts has the meaning it is given in s. 192(1) of the Road Traffic Act 1988, namely: "*Road, in relation to England and Wales, means any highway and any other road to which the public have access, and includes bridges over which a road passes*". The position in Scotland is defined in the Roads (Scotland) Act 1984. It follows that the question is whether or not the public have access to the

## Chapter 2 The Requirement to hold an Operator's Licence

road in question. This means that whether the road is in private or public ownership is an irrelevant consideration.

[T/2015/09 Richard & Sylvia Jones t/a Acorn Skips](#) (paragraphs 3 & 4).

Meaning of “operator” and “works” in terms of section 81 of the 1981 Act

[T/2018/66 Abus Ltd](#) (paragraphs 29 to 31)

## Chapter 3 Applications

(see also [Chapter 7 Repute](#) for cases involving incorrect or incomplete statements in application forms and [Chapter 8 Financial Standing](#) for cases in which no adequate financial information was supplied)

### 1. Senior Traffic Commissioner's Statutory Guidance

On "Legal Entities" can be found at:

<https://www.gov.uk/government/publications/traffic-commissioners-legal-entities-november-2018>

### 2. Essential requirements

Premature to apply without necessary supporting documents (certificate of qualification of transport manager omitted)

[2004/21 Carway Haulage](#)

(see also [2004/93 R Williams](#) (financial information))

Own correspondence address must be given – not enough to give that of representative

[2006/61 Chillway Express](#)

Advertisement – location of operating centre must be properly identified – s.11 of 1995 Act

[2003/116 A Reid](#) (misdescription of operating centre)

"It is important to those entitled to make a statutory objection under s.12(1) of the 1995 Act and it is, perhaps, even more important to those entitled to make representations under s.12(4), because it is only the 'owner or occupier of land in the vicinity' of the proposed operating centre who is given the right to make representations. It follows that a misdescription of the proposed operating centre in the advertisement may prompt representations from those who do not, in fact, qualify, because they are not owners or occupiers of land in the vicinity or it may exclude representations from others, who do not realise until too late, that the land that they own or occupy is, in fact, in the vicinity of the operating centre."

[2003/117 G Patrick](#) (insufficient detail of variation sought)

[2003/250 Anglian Removals](#) (omission of detail not prejudicial)

[2003/336 Win-For-Far Travel](#) (incorrect postal address was prejudicial)

[2004/237 B Gillivan](#) (misdescription of operating centre)

*"In setting out the facts we have made reference to the requests for a large scale Ordnance Survey map showing the operating centre and the surrounding area. The documents which were, in fact, provided by the Appellant were woefully inadequate. One of the most important purposes which the map or plan must serve is to enable the Traffic Commissioner to determine whether or not a person seeking to make representations is or is not 'the owner or occupier of land in the vicinity of the proposed operating centre'. It follows that the map or plan must show all the properties which could come within that category and that it must accurately reflect their relationship to the proposed operating centre. A large scale Ordnance Survey map is likely to provide the best solution since any form of sketch will need to be drawn with great care. In addition the map or plan must be capable of producing legible copies. One of the plans produced by the Appellant was on such a small scale that it was impossible to glean any useful information from it. The others were sketch plans, which copied very badly. They appeared to show little more than the Star Inn and its car park."*

[2004/374 A Coid](#) (movement of operating centre by 100 yards – advertisement not misleading)

[2006/400 Win-For-Far Travel](#) (wrong road name)

[T/2012/59 Kevin Smith t/a/ Midland Marble Ltd](#) (omission of “or occupiers” from mandatory passage in advertisement clearly prejudicial)

[UA-2022-000044-T Secure Transit Solutions Ltd](#) (wrong address published in the advertisement)

Advertisement – must be within time limit – s.11(3) of 1995 Act

[2003/120 JCM Print Services](#)

[2003/169 Project 2000 Europe](#)

[UA-2021-000467-T DA Prime Log Ltd](#)

“Proof copy” of advertisement and evidence of payment of a fee is insufficient to demonstrate that the advertisement was actually published in a newspaper at the appropriate time

[T/2020/11 James Civil Engineering Ltd](#) (para.17)

The position is the same in Northern Ireland because s. 10 of the 2010 Act is in identical terms to s. 11 of the 1995 Act.

[NT/2015/05 Raymond Pedlow t/a Pedlow Engineering](#)

Delay in receipt of advertisement by Traffic Commissioner – misunderstanding – remitted for consideration of merits

[2002/006 JC Stokes](#)

Confusion over detail and number of authorised vehicles

[2004/063 J&B Fryer Farms](#)

Applications must be in writing, they must be made on the form supplied by the TC and they must be signed by the Applicant, (see, for Goods Vehicles, Regulation 4 of the 1995 Regulations and in NI Regulation 3 of the 2012 Regulations). While there is a requirement in Regulation 5 of the 1995 Regulations and Regulation 4 of the 2012 Regulations for the application to be ‘sent’ to the T C or the Department, as the case may be, there is no express position in relation to service of applications. In [T/2105/74 Ian Phillips](#) the Tribunal held that in those circumstances s. 7 of the Interpretation Act 1978 applies. That section provides that:

“Where an Act [or secondary legislation] authorises or requires any document to be served by post (whether the expression ‘serve’ or the expression ‘send’ or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post”

There is only so much OTC staff can reasonably be expected to do to assist applicants. An argument that the Traffic Commissioner’s decision was flawed because, before it

was taken, neither the OTC nor the Traffic Commissioner, went through his application point-by-point, identified gaps and told him how to go about filling them was rejected.

[T/2016/55 Raymond Kyle Heard t/a Kyle's Executive Travel](#) (para.22-24)

### **3. Miscellaneous points**

Validity of objection by County Council considered

[2003/145 Norfolk CC v. Woodgrove](#)

(see also [2005/488 Norfolk CC](#))

Imposition of condition preventing employment of named disqualified persons

[2005/457 LJ Ings](#)

Letter querying request for information requests should be treated as request for Traffic Commissioner

[2008/792 K Oxley](#)

The time-limit referred to in article 11 of EU 1071/2009 appears to relate to applications for a licence, rather than applications to vary a licence

[T/2019/25 John Stuart Strachan trading as Strachan Haulage](#) (paragraphs 40 and 47)



## Chapter 4 Call-up letters

### 1. Notice of Issues

Omission in a call-up letter does not preclude subsequent reliance by the Traffic Commissioner on new or overlooked material so long as proper notice is given.

[2001/72 AR Brooks](#)

*“We do not accept that the call-up letter was defective but, even if it was, we think that the provisions of s.27(3) of the 1995 Act should be seen in context. Similar provisions are contained in reg.9 of the Public Service Vehicles (Operators’ Licences) Regulations 1995. Mr Duckworth submitted that only matters raised in the call-up letter could be relied upon at the subsequent public inquiry. But this is not what the provisions state. The Traffic Commissioner is obliged to give “notice in writing that he is considering” revocation of the licence for e.g. loss of good repute. The notice must state the grounds on which the Traffic Commissioner “is considering” such revocation and that representations may then be made by the licence holder. We think that it is plain that the reference to grounds goes further than mere mention of the subsection of s.27(8) of the Act relied upon. However, it is also plain that the wording is in the present tense (“is considering”) and does not preclude subsequent reliance on new or overlooked material, so long as notice in accordance with the rules of natural justice is given. Thus, a fresh call-up letter is unnecessary, as long as the position is clear.*

*“Mr Duckworth referred us to 1990 B26 Mighty Hire Ltd and 1996 H9 Bristol Benzol plc and these decisions should be viewed in the light of our observations. If a point does arise which has been previously overlooked, we see no difficulty with this, as long as the operator is given an opportunity of having an adjournment if he has been taken by surprise and cannot then deal with it.”*

(see also [2006/313 D Lloyd](#) (paragraphs 5 & 6, call-up letters are not pleadings. The essential requirement is one of fairness. Each case must be considered on its own merits).

[2006/405 Transclara](#) (see para. 4 adjournment and fresh call up letter after new material emerged during first PI).

[2007/104 S Lloyd](#) (paragraph 6 some material is only relevant if an explanation is given in call-up letter. The relevance of other material may only become apparent after further investigation).

“Essentially the position is one of fairness”.

[2009/516 F Ahmed & H Ahmed](#)

*“The Tribunal has recognised (see [2001/72 AR Brooks](#) and Chapter 2 in the Tribunal’s Digest, available on its website) that new points may arise during a hearing. It is not fatal that these have not been raised in the call-up letter as long as those affected are given the opportunity, if present, of having time to consider them, with an adjournment if appropriate. But the situation must be viewed differently if those likely to be affected are not present. We do not say that an adjournment must be ordered in all such cases because it may be clear that those affected, be it operator, director or transport manager, have no intention of appearing or making representations in any event; but the need for notice of allegations to have been given must always be borne in mind.*

*Essentially the position is one of fairness. We have to say that in the present case the way in which the evidence developed was entirely one-sided, with all fault being attributed to the Appellants. They were not put on notice to this effect and the call-up letter to Slumber Dream put the allegations in very general terms. No reference is made to the alleged non-disclosures in Elkdale’s*

*application form, to which the Deputy Traffic Commissioner understandably took objection; at its highest the call-up letter merely mentions the “apparent connection” between the two companies in wording which can best be described as bland. It is plain from his very short decision that the Deputy Traffic Commissioner took a serious view of the non-disclosures and we have to say that had he paused for more thought and opted to give a written decision he might have realised that it was necessary that the two Appellants should have been put on express notice of the position that had arisen”.*

See also

[T/2016/13 SNE Hire & Sales Limited](#), where it was held there was no unfairness in circumstances where it was abundantly clear to the parties what the issues were in the case, despite an omission in the call up letter.

[UA-2022-000083-T REL Haulage Limited](#), where it was held that given the concerns which had clearly been identified by the TC prior to the PI, “a clearer signal of those concerns, sufficient to alert the appellant company to a possible need to provide further information regarding the business activities...was, in all fairness required” (paragraph 42).

Failure to refer to possibility of disqualification in a call-up letter was not cured by subsequent opportunity to make representations – adjournment and further hearing necessary

[2001/11 Pagoda Travel](#)

[T/2010/022 Coachman Travel Ltd & Saunders](#)

“The Traffic Commissioner’s comments at the end of the first hearing were indicative of her then state of mind. .... As can be seen, her attitude towards Mr Saunders was different and we think that he could reasonably have thought, if the subject was in his mind at all, that an order for disqualification against him was unlikely.

..... But have to say that in the light of the history it was necessary for Mr Saunders (and for that matter Mr A Berry, if it were not done) to be given notice of the evidence and of the Traffic Commissioner’s intention to consider disqualification before she went on to make the order itself. The best course would have been to sent out a transcript of the second hearing but a summary of the evidence would have been sufficient. Representations should have been invited, together with an opportunity for oral evidence if requested.”

Operator taken by surprise by contents of previously undisclosed report – Traffic Commissioner should have ordered adjournment of own volition – “chaotic” hearing

[2000/5 M Williams](#)

Although not all convictions were listed in call-up letter they were all put to operator at the PI and admitted by him without complaint or application for adjournment, (appeal dismissed).

[2001/53 M Williams](#)

A finding that a Transport Manager is not of good repute or not professionally competent cannot be made unless notice has been given in accordance with paragraph 15(1) of Schedule 3 to the Goods Vehicles (Licensing of Operators) Act 1995

[T/2010/015 GAP Container Services Ltd & Evans](#)

Traffic Commissioner is not obliged personally to consider terms of call-up letters – see s.74 Deregulation and Contracting Out Act 1994

[2001/72 AR Brooks](#)

## 2. Giving Notice

Sufficient if call-up letter sent to proper address without proof of receipt (para.19(1) 1995 PSVOL Regs) but preferable to obtain one.

[2000/34 Solent Travel](#)

(see also Muck It case in [Chapter 17 Appeals from Tribunal](#))

Paragraph 6(1) of Schedule 4 to the Goods Vehicles (Licensing of Operators) Regulations 1995 provides for similar arrangements to those set out in Paragraph 19(1) of the 1995 PSVOL Regulations

[T/2012/6 Goodman Hitchens PLC](#)

It is generally inappropriate to rely on the 'deemed receipt' provisions where it is known that a letter has not been received.

[T/2012/6 Goodman Hitchens PLC](#)

The 'deemed receipt' provisions involve the exercise of discretion as to which of the methods set out in paragraph 6(1) of Schedule 4 to the 1995 Regulations should be used. The methods are not mutually exclusive. There will be cases where the fair and appropriate course is to use more than one method. "Transmitting a facsimile copy" should be construed purposively and includes a letter sent as an email attachment. Email may provide a method of checking/obtaining an up to date correspondence address. The deemed receipt provisions are essential to enable Traffic Commissioners to do their job but it is important that they are operated fairly. Where a Traffic Commissioner or the OTC have actual knowledge that the chosen method of giving notice will fail or has failed the question of using alternative methods must be considered.

[T/2013/74 Highway International Ltd.](#)

Service of notice on transport manager of proceedings affecting his good reputation satisfied by notice to company of which sole director was transport manager (para.15(1) Schedule 3 1995 Act) – requirement directory not mandatory

[2000/59 Dolan Tipper Services](#)

(see also [Chapter 7 Professional Competence and Transport Managers](#))

## Chapter 5 Requirements for the Grant of a Licence – General

### 1. Heavy Goods Vehicles

On an application for a standard licence s.13(1) of the 1995 Act provides that the Traffic Commissioner must consider whether the requirements of ss. 13A and 13C are satisfied and, “if he thinks fit” whether the requirement of s. 13D is satisfied.

On an application for a restricted licence s. 13(2) of the 1995 Act provides that the Traffic Commissioner must consider whether the requirements of ss. 13B and 13C are satisfied and, “if he thinks fit” whether the requirement of s. 13D is satisfied.

Section 13A deals firstly with the requirements: (i) to have an effective and stable establishment, (see [Chapter 6 Establishment](#)), (ii) to be of good repute, (see [Chapter 7 Repute](#)), (iii) to have appropriate financial standing, (see [Chapter 8 Financial Standing](#)) and (iv) to be professionally competent (see [Chapter 9 Professional Competence and Transport Managers](#)). Secondly this section deals with the requirement to have a designated Transport Manager, who is of good repute and professionally competent and, where relevant not prohibited from being designated by the Traffic Commissioner and/or not designated for too many undertakings or for too many vehicles, (see [Chapter 9 Professional Competence and Transport Managers](#)).

Section 13B sets out the requirement that an applicant for a restricted licence is “not unfit” to hold an operator’s licence.

Section 13C sets out a number of other factors about which a Traffic Commissioner must be satisfied before an operator’s licence can be issued.

In [UA-2021-002165-T Connor Construction \(South West\) Ltd](#), the Tribunal held that section 13C(7), which permits a TC to take into account undertakings, “does not authorise a TC to record on a licence an undertaking that is not freely given. The impetus does not have to come from an operator, it is perfectly permissible for a TC to invite an undertaking and then accept and record one given in response, but one cannot be imposed” (para 23). The Tribunal further noted this is in accordance with STC Statutory Document 10 “to the effect that undertakings are legal promises given by an operator and that there is thus a distinction between conditions, which may be imposed, and undertakings which may be sought.” (para 23).

The Tribunal in Connor Construction (South West) Ltd also rejected a submission that the matters listed from 13C(2) to (6) are the only matters in which undertakings can be recorded against an operator’s licence. It observed that “Section 26 of the Act affords the TC a broad discretion with respect to revocation, curtailment or suspension of a licence...and such discretion must be exercised in accordance with the principle of proportionality (see *Crompton v Department of Transport North Western Area* [2003] EWCA Civ 64). The practice of TC’s accepting undertakings as to matters which may not be specified in 13(C) (2) to (6) is, we accept, an implicit power but it is present and is important in enabling TC’s to exercise the powers they have in a way which is proportionate and appropriately flexible. (para 25)”. See also paragraph 17 in [UA-2021-000565-T Clayton Frances Jones t/a Street Buses](#) (set out below under paragraph 2 ‘Public Service Vehicles’) which concerned the giving of an undertaking as a prerequisite to the grant of an operator’s licence.

Section 13D, (which can only be considered if the Traffic Commissioner “thinks fit”, see [T/2012/46 Pradeep Kumar Sharma t/a RS Fruitstore](#), deals with arrangements for maintaining authorised vehicles in a fit and serviceable condition. The requirement of the section is met if this will “not be prejudiced by reason of the applicant having insufficient financial resources for that purpose”.

## 2. Public Service Vehicles

On an application for a standard licence s.14(1) of the 1981 Act provides that the Traffic Commissioner must consider whether the requirements of ss. 14ZA and 14ZC are satisfied.

On an application for a restricted licence s. 14(2) of the 1981 Act provides that the Traffic Commissioner must consider whether the requirements of ss. 14ZB and 14ZC are satisfied.

Section 14ZA deals firstly with the requirements: (i) to have an effective and stable establishment, (see [Chapter 6 Establishment](#)), (ii) to be of good repute, (see [Chapter 7 Repute](#)), (iii) to have appropriate financial standing, (see [Chapter 8 Financial Standing](#)) and (iv) to be professionally competent (see [Chapter 9 Professional Competence and Transport Managers](#)). Secondly this section deals with the requirement to have a designated Transport Manager, who is of good repute and professionally competent and, where relevant not prohibited from being designated by the Traffic Commissioner and/or not designated for too many undertakings or for too many vehicles, (see [Chapter 9 Professional Competence and Transport Managers](#)).

Section 14ZB sets out the requirement that an applicant for a restricted licence is (i) of good repute, (see [Chapter 7 Repute](#)), and (ii) of appropriate financial standing, (see [Chapter 8 Financial Standing](#)).

Section 14ZC sets out a number of other factors about which a Traffic Commissioner must be satisfied before an operator’s licence can be issued.

[UA-2021-000565-T Clayton Frances Jones t/a Street Buses](#) concerned the giving of an undertaking as a prerequisite to the grant of an operator’s licence. The Tribunal held:

“It is an established principle that TCs can request undertakings on a range of issues about which they have concern...It matters not whether the request for an undertaking was made during the course of a hearing or after the TC had risen to consider her decision” (paragraph 16). The Tribunal continued that “Undertakings are freely given...But once the undertaking is given, as in this case, there can be no valid appeal upon the basis that it should not have been required at all” (paragraph 17).

## 3. Continuing Nature of Requirements

In [NT/2013/82 Arnold Transport & Sons Ltd v DOENI](#) the Tribunal said, at paragraph 11:

*“The grant of an operator’s licence does not mean that an operator can then proceed on the basis that the requirements that must be met in order*

*to obtain a licence can thereafter be disregarded. In our view it is clear both from the terms of the 2010 Act and from Regulation 1071/2009 that these are continuing obligations, which an operator is expected to meet throughout the life of the licence. It is implicit in the terms of s. 23, which gives the Department power to revoke, suspend or curtail an operator's licence, that this can take place at any time and for any reasonable cause, including matters covered by the requirements of s. 12 as amended. It is explicit in s. 24, which provides that a standard licence shall be revoked if at any time it appears that the licence-holder is no longer (i) of good repute, (ii) of appropriate financial standing or, (iii) professionally competent. The underlining, in each case is ours. First, we wish to stress that once it appears that the licence-holder is no longer of good repute, or of appropriate financial standing or professionally competent the licence must be revoked because the Act makes it clear that there is no room for any exercise of discretion. Second, the use of the expression 'at any time' makes the continuing nature of the obligations crystal clear".*

## Chapter 6 Establishment

(see also [Chapter 3 Applications](#) for cases involving incorrect advertisements or mis-descriptions and [Chapter 16 International Issues](#))

### 1. General

Section 13A(2)(a) of the 1995 Act and section 14ZA(2)(a) of the 1981 Act each provide that the existence of “an effective and stable establishment in Great Britain” is to be determined in accordance with Article 5 of Regulation 1071/2009.

The existence of “an effective and stable establishment in Great Britain” is a continuing requirement. If at any time it appears to the Traffic Commissioner who issued the licence that the licence holder no longer satisfies this requirement revocation of the licence is mandatory, (see, [Chapter 12 Revocation, Suspension and Curtailment](#)).

### 2. Senior Traffic Commissioner’s Statutory Guidance

On “Operating Centres, Stable Establishments and Addresses for Service” can be found at:

<https://www.gov.uk/government/publications/traffic-commissioners-operating-centres-stable-establishments-and-addresses-for-service-november-2018>

### 3. Operating Centres

#### (i) Availability

It is for the applicant to prove that an operating centre is available because s.13(5)(d) of the 1995 Act uses the present tense

[T/2010/060 Subic Solutions](#)

#### (ii) ‘Normally kept’

Where vehicles are “normally kept” (s.7(1) 1995 Act) is a question of fact in each case.

[2000/18 Euroline Transport](#)

(see also [2002/144 Abbeycheer](#), “the T C should have asked himself: ‘Where in his area was the vehicle normally kept’?”

Where vehicles “normally kept” is likely to be in country where registered

[2000/14 Reids Transport](#)

But vehicles may be kept in UK despite operator’s residence in Spain

[2006/392 G Brandon](#)

Persistent failure to use operating centre – vehicles not “normally kept”

[2003/147 WC Hockin](#)

[2006/277 MJ Fenlon](#) (parking outside own house)



Vehicles “normally kept” in Greece – failure to use operating centre in UK  
[2003/176 Sigma Trans](#)

Authorised numbers of vehicles exceeded capacity of operating centre – suitability  
[2003/252 Thomas Transport](#)

#### 4. Environmental Issues

##### (i) Suitability

Suitability of operating centre and imposition of conditions (s.21 1995 Act) considered – an inspection of operating centre is good practice

[2001/56 Surrey CC v. P Williams](#)

(see comments of Court of Appeal in [Chapter 17 – Appeals from Tribunal](#))

[2005/356 Edwards Transport \(Shropshire\)](#)

(Traffic Commissioner must ignore planning objections when planning authority has chosen not to appear)

[2008/407 Surrey CC v. Rybak-Rajewski](#) (attachment of conditions made OC suitable)

[2008/542 Absolute Scaffolding Services](#) (imposition of conditions)

[T/2011/50 A Tucker & Son Ltd](#)

After quoting s. 23(1) of the 1995 Act, at paragraph 8, the Tribunal said:

“8) *It follows that, if a Traffic Commissioner has any doubts as to the suitability of an operating centre, careful thought should be given to the question of whether practical, realistic and enforceable conditions can be devised to prevent or minimise any adverse effects on environmental conditions arising from the use of a place as an operating centre. In undertaking this analysis a Traffic Commissioner is bound to have regard to the nature and degree of the environmental concerns, the commercial context and the nature of the operator’s business model that is put forward to justify the desired use of the operating centre.*

9) *As the tribunal made clear in [2008/542 Absolute Scaffolding Services](#) Traffic Commissioners have extensive powers to attach conditions to a licence if, by doing so, they can achieve a balanced outcome that will have the effect of sufficiently reducing any noise or other relevant environmental impact of the operation on local residents, especially during unsocial hours, whilst not seriously damaging the operator’s business. But when considering whether conditions are practical and realistic, Sections 23(4) and (5) make it clear that the effect on the operator’s business will be a highly relevant factor. It follows that there is little point in a Traffic Commissioner spending much time thinking about conditions that will seriously undermine the whole commercial rationale for the proposed use of the operating centre or will, otherwise, have an extremely damaging effect on the operator’s actual or anticipated business”. The stance adopted by the operator discouraged the Traffic Commissioner from looking for a compromise. At paragraph 11 the Tribunal said:*

*“Unfortunately, in adopting this approach, the operator ran the risk that the Deputy Traffic Commissioner would resolve the matter in the way that she*



*did. Our view is that, having required the Deputy Traffic Commissioner to make a hard choice, the operator cannot now complain that she made it – and cannot now suggest that she should have embarked on a process of attempted mediation or forced compromise that, on the evidence she had been given, was almost bound to fail. Given the way the matter had been put to her by the operator, and given the findings that the Deputy Traffic Commissioner properly made in relation to the evidence from the representors, it is unsurprising that the Deputy Traffic Commissioner concluded that there was little to be gained by proposing, or commencing the procedure that may lead to imposing, conditions that the operator had firmly declared would be entirely inconsistent with the imperatives of its business model”.*

Suitability an issue for Traffic Commissioner to decide as a question of fact

[2001/41 Tate Fuel Oils](#)

[2004/295 T & M Plant Hire](#) (paragraph 10)

Suitability - principles to be applied

[2001/84 GR Way](#) (paragraph 4)

[2008/335 Greaves Surveying and Engineering](#) (paragraph 7)

Piecemeal approach by Traffic Commissioner to multiple use of operating centre – conflicting interests must be resolved fairly

[2005/185 British Benzol](#)

Objection – validity and suitability of access considered

[2003/145 Norfolk CC v. Woodgrove](#) (paragraph 4)

Failure to permit operator to comment on VOSA report

[2005/357 J Bayne & Sons](#)

Power to impose conditions limiting movements and maintenance of vehicles considered but Traffic Commissioner failed to set out findings of fact when inviting representations on effect of conditions on business (s.23)(4) 1995 Act)

[2000/32 T Saunders & Sons](#) (paragraph 7)

Power to impose conditions to an interim licence

[T/2015/63 Mr & Mrs Smith](#) (paragraph 35)

Authorised numbers of vehicles exceeded capacity of operating centre – suitability

[2003/252 Thomas Transport](#)

Meaning of “vicinity”

[T/2016/31 Tunnell Grab Services Ltd](#) (paragraph 22)

“The meaning of ‘vicinity’ is not defined for the purposes of section 12(4) or 19 of the 1995 Act...We observe that in principle somewhere less than 100 yards might not be in the vicinity and somewhere more than a mile away might be in the vicinity. It all depends on the context.”

And then at paragraph 23:

“Section 19(5) excludes anybody from making representations under 19(4)(b) unless any adverse effect on environmental conditions from the proposed use ‘would be capable of prejudicially affecting the use and enjoyment of the land.’ Effectively that provision determines what land is in the vicinity...”

(ii) Legal and Planning issues

Undesirable for Traffic Commissioner to become involved in issues of law

[2004/202 D Holloway](#)

*“We have quoted at length from these earlier decisions to stress once again that Traffic Commissioners should not be invited or expected to investigate or resolve outstanding questions of property law. It is for the operator to prove, on the balance of probability, facts which would entitle the Traffic Commissioner to conclude that the place to be used as an operating centre is lawfully available for that purpose, in the sense that it is lawfully within the reach of the operator. Other dictionary definitions of ‘available’ are: ‘capable of being used’, ‘at one’s disposal’, and ‘accessible’. When preceded by the word ‘lawfully’ they all convey exactly the same meaning.*

*“If the operator shows that he is the owner or tenant of the land in question there is no obligation on the Traffic Commissioner to study the title deeds to ensure, for example, that they do not contain a covenant which would prevent the land being used as an operating centre. On the other hand if it became clear to the Traffic Commissioner that proceedings had been commenced, which would decide whether or not the land could, lawfully, be used as an operating centre, the Traffic Commissioner would need to consider very carefully whether or not it was appropriate to wait until those proceedings had been resolved. While the likely delay could be a relevant consideration any attempt at assessing the outcome must be resisted. Where proceedings are threatened it may be important to attempt to assess whether they will actually be issued but once again any attempt to assess the merits must be avoided.”*

Effect of lawful development certificate under s.191(2) of Town & Country Planning Act 1990 considered – undesirable for Traffic Commissioner to become involved in planning law

[2003/87 J Hansford](#)

*“We have to say that we disagree with this approach. We considered the effect of a Lawful Development Certificate in 1999 L34, L37 & L41 Norman Marshall Ltd v. West Sussex CC & Others. In paragraph 9 of our decision we stated:-*

*“9. The Respondents’ submission was that the wording of s.19(7)(b) of the Act means what it says, which is that the Certificate is only valid if it complies with the wording, ie. “stating that its use as an operating centre for vehicles used under any operator’s licence is or would be lawful”. S.191 of the Town and County Planning Act 1990 permitted the Company to apply in the terms of s.19(7)(b) so as to obtain a Certificate to cover the proposed use. It was neither necessary nor appropriate for the Traffic Commissioner to have to arbitrate in planning matters and for him to have to consider whether use of an operating centre would have constituted a material change. Submissions to such effect had been made to the Traffic Commissioner by the Company, with supporting case law. An example of the difficulty in this approach is contained in one of the many documents put before the Traffic Commissioner. This is a refusal to permit change of use by the same planning authority, the Second Respondents. The document is dated 23 November 1998, and refers to an application submitted on 20 August 1998 with the development being stated as:*

“Change of use to motor salvage contractors depot including parking/storage of plant, vehicles and equipment and use of workshops for vehicle repairs Norman Marshall Ltd, Nowhurst Lane, Broadbridge Heath.”

*“The Traffic Commissioner was told that a planning appeal was outstanding. However, it is clear on the face of the document that the Second Respondents as planning authority took the view that the Company’s proposed use was unlawful. It was common ground on the hearing of the appeal that the Certificate itself had been obtained for a different purpose and we think that this demonstrates the need for strict compliance with s.19(7)(b) if the Certificate is to have the intended effect. This Tribunal has stated on previous occasions (see 1997 J 23 & 24 Surrey County Council & Guildford Borough Council v. Alan Greenwood) that in considering s.13 it is undesirable for a Traffic Commissioner to become involved in questions of land law. We repeat this comment in relation to planning law.”*

See also [T/2016/36 Darren John Worsley](#).

[UA-2021-002168-T PED Plant Ltd](#) reaffirms previous case law which the Tribunal found “supports the view that where there are planning or similar sorts of disputes of substance which are unresolved and which concern the lawfulness or otherwise of the use of a site as an Operating Centre, a TC ought not, absent something exceptional, to seek to adjudicate upon such matters himself/herself. Some of the decisions we have referred to above are, by now, a little dated. But we have not been given any persuasive reason to depart from the logic which underpins those decisions, and we can detect no such reasons for ourselves. Indeed, it seems to us entirely rational and sensible to say that it would be inappropriate to expect a TC to have the necessary planning expertise and experience to enable him or her to properly assess the likely outcome of a planning dispute or to seek to adjudicate upon a dispute of a technical nature as to whether a particular use might be lawful or not” (paragraph 36).

Traffic Commissioner failed to take certificate of lawful use into account when removing operating centre from licence

[2002/29 Traffic Commissioner Atkinson](#)

Certificate of Lawful Use is relevant to “suitability” rather than “availability” of an operating centre

[T/2019/39 Upright Scaffolding Ltd](#) (paragraph 28)

## **5. Miscellaneous Points**

Desirability of joining residents as parties and hearing related issues to adjoining operating centres at same Traffic Commissioner considered

[2001/41 Tate Fuel Oils Ltd](#)

Need to consider status of representor

[2004/315 MME Services](#)

Definition of “road” considered

[2003/157 North Kent Recycling](#)

The word “road” in the 1981 and 1995 Acts has the meaning it is given in s. 192(1) of the Road Traffic Act 1988, namely: “*Road, in relation to England and Wales, means any highway and any other road to which the public have access, and includes bridges over which a road passes*”. The position in Scotland is defined in the Roads (Scotland) Act 1984. It follows that the question is whether or not the public have access to the road in question. This means that whether the road is in private or public ownership is an irrelevant consideration.

[T/2015/09 Richard & Sylvia Jones t/a Acorn Skips](#) (paras 3 & 4).

Objection – failure to consider

[2005/488 Norfolk County Council](#)

Traffic Commissioner has power to remove operating centre from licence if in breach of conditions

[2002/20 HAUC](#)

Change of operating centre is a material change

[2005/411 Frank Maas \(UK\)](#)

No vehicles

[T/2017/72 Reads Worldwide Ltd](#)

[T/2018/45 Ian Francis Hayman](#)

[UA-2022-000480-NT Mr Mark McBurney t/a MMB Haulage](#)

## Chapter 7 Repute & Fitness

### 1. Heavy Goods Vehicles

The requirement to be 'of good repute' in order to hold a standard licence is now set out, in mandatory terms, in Article 3 of EU Regulation 1071/2009 and sections 13 and 13A of the 1995 Act. Whether an applicant or an operator is of good repute is to be determined in accordance with paragraphs 1 to 5 of Schedule 3 to the 1995 Act. However, there are provisions in Articles 3 and 6 of Regulation 1071/2009, which are also relevant.

See [T/2012/34 Martin Joseph Formby t/a G & G Transport](#) (at paragraphs 6-10, which contain quotations from these provisions)

In relation to HGV 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 to the 1995 Act. In the appeal of [NT/2013/82 Arnold Transport & Sons Ltd v DOENI](#) the Tribunal said this at paragraph 18:

*“18. The provisions in relation to Good Repute are set out in Regulations 5-9 of the Qualifications Regulations. The scope of the requirement to be of good repute can best be assessed by considering the terms of Regulation 5(1), (in relation to individuals), and Regulation 5(2), (in relation to companies). Regulation 5(1) permits the Department to have regard to “any matter” but requires it to have regard to (i) any convictions or penalties incurred by the individual or any other relevant person and (ii) any other information which appears to the Department to relate to the individual’s “fitness” to hold a licence. Regulation 5(2) requires the Department to have regard to “all the material evidence” but, in particular, to (i) any convictions or penalties incurred by the company, company employees or any other relevant person and (ii) any other information as to past conduct on the part of the company or any relevant person if the conduct appears to the Department to relate to the company’s “fitness” to hold a licence. We have 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”.*

In [T/2014/24 KA & Z Leonida t/a ETS](#) the Tribunal said this, at paragraph 4:

*“... 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”.*

In the case of restricted licences the requirement is that the ‘applicant is not unfit to hold an operator’s licence by reason of any of the matters set out in s.13B(1)(a) or (b) of the 1995 Act.

## 2. Public Service Vehicles

Section 14ZA(2)(b) of the 1981 Act, as amended, provides that the mandatory requirement to 'be of good repute' when applying for or holding a standard PSV operator's licence is to be determined "in accordance with paragraph 1 of Schedule 3 to the 1981 Act". Article 6 of Regulation 1071/2009 will also apply. In the case of restricted PSV operator's licences the same requirement to be of good repute is set out in s. 14ZB(a) of the 1981 Act, as amended.

In the case of HGV and PSV operator's licences the requirement to be of good repute is a continuing requirement. If at any time it appears to the Traffic Commissioner who issued the licence that the licence holder no longer satisfies this requirement revocation of the licence is mandatory, (see, [Chapter 12 Revocation, Suspension and Curtailment](#)).

## 3. Senior Traffic Commissioner's Statutory Guidance

On "Good Repute and Fitness" can be found at:

<https://www.gov.uk/government/publications/traffic-commissioners-good-repute-and-fitness-march-2019>

## 4. Burden of Proof & Approach

General approach to regulation considered by Court of Session in [Thomas Muir](#) case and by Court of Appeal in [Crompton](#) case – see [Chapter 17 Appeals from Tribunal](#).

Burden of proof – position at time of application and thereafter contrasted by Court of Appeal – see comments in [Muck It](#) case in [Chapter 17 Appeals from Tribunal](#) – burden of proof on applicant for a licence but not in respect of an existing licence – previous decisions of Tribunal that burden of proof on an operator throughout not followed.

See [2006/56 Paul Oven Transport](#)

Operator's licensing is based on trust

[T/2012/34 Martin Joseph Formby t/a G & G Transport](#) (at paragraph 17)

"Traffic Commissioners must be able to trust those to whom they grant operator's licences to operate in compliance with the regulatory regime. The public and other operators must also be able to trust operators to comply with the regulatory regime".

[NT/2013/82 Arnold Transport & Sons Ltd v DOENI](#) at paragraphs 12 & 13 the Tribunal said:

11. *"The Tribunal has stated on many occasions that operator's licensing is based on trust. Since it is impossible to police every operator and every vehicle at all times the Department in Northern Ireland, (and Traffic Commissioners in GB), must feel able to trust operators to comply with all relevant parts of the operator's licensing regime. In addition other operators must be able to trust their competitors to comply, otherwise they will no longer compete on a level playing field. In our view this reflects the general public interest in ensuring that Heavy Goods Vehicles are properly maintained and safely driven. Unfair competition is against the public interest because it encourages operators to cut corners in order to remain*



*in business. Cutting corners all too easily leads to compromising safe operation.*

*12. It is important that operators understand that if their actions cast doubt on whether they can be trusted to comply with the regulatory regime they are likely to be called to a Public Inquiry at which their fitness to hold an operator's licence will be called into question. It will become clear, in due course, that fitness to hold an operator's licence is an essential element of good repute. It is also important for operators to understand that the Head of the TRU is clearly alive to the old saying that: "actions speak louder than words", (see paragraph 2(xxix) above). We agree that this is a helpful and appropriate approach. The attitude of an operator when something goes wrong can be very instructive. Some recognise the problem at once and take immediate and effective steps to put matters right. Others only recognise the problem when it is set out in a call-up letter and begin to put matters right in the period before the Public Inquiry takes place. A third group leave it even later and come to the Public Inquiry with promises of action in the future. A fourth group bury their heads in the sand and wait to be told what to do during the Public Inquiry. It will be for the Head of the TRU to assess the position on the facts of each individual case. However it seems clear that prompt and effective action is likely to be given greater weight than untested promises to put matters right in the future".*

The approach when dealing with an application is not the same as the approach when deciding whether or not to take regulatory action, see:

[Aspey Trucks Ltd 2010/49](#) (at paragraph 10),

*"In a case such as this, the Deputy Traffic Commissioner was not looking at putting someone out of business. Rather, he was deciding whether or not to give his official seal of approval to a person seeking to join an industry where those licensed to operate on a Standard National or Standard International basis must, by virtue of S.13(3), prove upon entry to it that they are of good repute. In this respect, Traffic Commissioners are the gatekeepers to the industry – and the public, other operators, and customers and competitors alike, all expect that those permitted to join the industry will not blemish or undermine its good name, or abuse the privileges that it bestows. What does "Repute" mean if it does not refer to the reasonable opinions of other properly interested right-thinking people, be they members of the public or law-abiding participants in the industry"?*

See [T/2012/34 Martin Joseph Formby t/a G & G Transport](#) at paragraph 17

Threatening behaviour after Traffic Commissioner held by Traffic Commissioner to justify finding of loss of repute – appeal dismissed by Tribunal but allowed by Court of Appeal – proportionality considered – see [Crompton](#) case in [Chapter 22 Appeals from Tribunal](#)

Approach by TCs and Tribunal to repute – proportionality considered  
[2002/217 Bryan Haulage \(No.2\)](#) (paragraph 11)

*"In applying the Crompton case it seems to us that traffic commissioners and the Tribunal have to reconsider their approach. In cases involving mandatory*

revocation it has been common for findings to have been made along the lines of “I find your conduct to be so serious that I have had to conclude that you have lost your repute: accordingly, I have also to revoke your licence because the statute gives me no discretion”. The effect of the Court of Appeal’s judgment is that this two-stage approach is incorrect and that the sanction has to be considered at the earlier stage. Thus, the question is not whether the conduct is so serious as to amount to a loss of repute but whether it is so serious as to require revocation. Put simply, the question becomes “is the conduct such that the operator ought to be put out of business?”. On appeal, the Tribunal must consider not only the details of cases but also the overall result.”

(for fuller quotation see [Chapter 19 Decisions and Reasons](#) and for [Crompton](#) case see [Chapter 22 – Appeals from Tribunal](#))

Once a finding of loss of good repute has been made, (or upheld by the Tribunal), revocation is the mandatory consequence of the wording of the 1981, 1995 and 2010 Acts (see s. 17(1), s. 27(1) and s. 24(1) respectively). In particular there is no opportunity, after a finding of loss of good repute, to consider whether or not revocation is proportionate. As a result the question of proportionality must be considered when deciding whether or not to make a finding of loss of good repute. To justify a finding of loss of good repute the matters found proved must be such that revocation is a proportionate regulatory response. These points received detailed consideration after the original decision in [T/2015/39 Firstline International Ltd & William Lambie v Secretary of State for Transport](#) was set aside and the matter was re-heard. See paragraphs 20-34 of the decision when the appeal was re-heard:

[T/2015/39 Firstline International Ltd & William Lambie v Secretary of State for Transport](#)

In [T/2021/30 Raymond Leonard Sheaf](#), the Tribunal stressed the importance that TC’s written reasons explain the consideration that was given as to whether, in all the circumstances, a finding of loss of repute was a proportionate response as this is an important aspect of the necessary reasoning that underpins the decision (paragraphs 12-13).

Repute (and other requirements) must be judged as at date of Traffic Commissioner’s decision

[2001/49 Norbert Dentressangle](#) (paragraph 8)

[T/2014/59 Randolph Transport Ltd & Catherine Tottenham](#) At paragraph 12 the Tribunal said: “*Although repute must be considered as at the date of the decision, that does not mean that the past becomes irrelevant. In many cases, the present is simply the culmination of past events*”.

Where an individual is both the operator and transport manager, it is questionable whether it is feasible or appropriate to compartmentalise the issue of good repute as an operator and issue of good repute as a transport manager without detailed reasons for doing so.

[T/2017/55 Alistair Walter](#) (paras.23-24)

No power to make interim orders without hearing operator

[2006/487 D & H Travel](#)



T C may have regard to “**all the relevant evidence**” under para. 1(1) of Schedule 3 of the 1981 Act.

[2009/264 A R Brown](#)

“When referring to para.1(1), Schedule 3 of the Act Mr Whiteford referred us only to the wording of sub-para.(b). He did not dwell on the opening words ‘have regard to all the relevant evidence and in particular to .....’. The relevant evidence included the family background, which the Traffic Commissioner fully reviewed. She had to make an assessment of whether the Appellant would be independent of his family if granted an operator’s licence and in so doing she had to take all matters into account, including his demeanour as a witness”.

[2011/28 Heart of Wales Bus & Coach Ltd and Clayton Francis Jones](#)

“Generally, however, to cross the line, Traffic Commissioners should require evidentially established and relevant conduct that is patently unacceptable in a regulated industry that requires operators and Transport Managers to be of good repute. There will be cases where it is only necessary to set out the conduct in question to make it apparent that the operator ought to be put out of business. We are, however, satisfied that this was not such a case. On the contrary this was a case that called for a careful assessment not only of the weight to be given to the various issues raised, but also of the relevance, having regard to the wording of Schedule 3”.

[T/2016/72 Catch 22 Bus Ltd and Phillip Higgs v Secretary of State for Transport](#)

confirms “all relevant evidence” may include conduct which is not unlawful. The appellant’s conduct involved following and filming the Senior Traffic Commissioner in an attempt to obtain footage that might harm her reputation and standing; and posting the video on the Internet. The UT’s decision was upheld in the Court of Appeal – see [Catch22Bus Ltd and Phillip Higgs v Secretary of State for Transport \[2019\] EWCA Civ 1022](#). Sharp LJ, giving the leading judgment, said (para.41):

“In my view, the facts demonstrated that Mr Higgs’ conduct could properly be characterised as an affront to the regulatory system rather than (merely) an affront to the particular individual concerned. As Sir James Eadie QC [counsel for the Secretary of State] submitted, they indicated that Mr Higgs was a man who was unprepared to accept regulatory action or confine himself to the legitimate routes available for redress, but was prepared (and did) operate outside the system through intrusive, distressing and intimidating campaign designed to destroy or seriously damage her [the Senior Traffic Commissioner] reputation.”

And (para.42):

“the Upper Tribunal’s strong core conclusion, reflecting that of the DTC, that Mr Higgs intended to create an intimidatory atmosphere for others involved in traffic adjudication and that such conduct represented a direct attack on the very essence of an independent adjudicatory process was one it was justified in reaching on the facts...”

[NT/2017/16 Damien Toner](#) (paras.46-65 – admission of DVSA report in a Northern Ireland case was not erroneous)

Dishonesty – [UA-2023-000144-T Leafy Designs Ltd](#)

“We do accept that there are degrees of dishonesty. As a matter of simple common-sense that is obviously right... But just because an appellant can point to conduct which if committed would lead to a conclusion that the overall transaction could have been more dishonest than it was ...that does not wipe

out the dishonesty that there has been. But we accept that, generally speaking, there normally has to be an evaluation as to the substance, nature and degree of any dishonesty before a properly informed decision as to regulatory action may be taken. But where matters are straightforward that need not be a lengthy evaluation and need not generate a lengthy written explanation. It will depend on the circumstances” (paragraph 25).

TC may consider “**conduct**” under para.1(2) Schedule 3 of 1981 Act although no conviction has resulted

[2000/16 Group Taxibus](#) (paragraph 7)

[2001/10 T Smith](#) (paragraph 3, Traffic Commissioner is entitled to consider all relevant evidence, including offences ‘left on the file’ in criminal proceedings)

[2006/73 AG Everett](#) (paragraph 26, Traffic Commissioner entitled to have regard to Appellant’s conduct as Managing Director of associated Dutch Company)

But see [2006/487 D & H Travel](#) (paragraph 7 sexual harassment unrelated to operation of authorised vehicles)

Where the holder of an operator’s licence is a limited company the Traffic Commissioner should not attribute the conduct of directors and/or shareholders to their company unless there is justification for piercing the corporate veil that separates them.

[T/2013/08 Vision Travel Ltd](#) (see also [Chapter 17 Duties of Directors](#))

But the terms of Paragraph 1(2) of Schedule 3 to the 1995 Act and the similar provisions in Paragraph 1(2) of Schedule 3 to the 1981 Act require the Traffic Commissioner to have regard, amongst other things, to the previous conduct of the company or any of its officers, servants or agents. This alone may justify piercing the corporate veil in the case of directors, officers, servants or agents.

Where a partnership applies for an operator’s licence and one of the partners is disqualified from holding or obtaining an operator’s licence the application must be refused because of the terms of s. 28(1)(b) of the 1995 Act.

[T/2015/16 Heavy Haulage \(Scotland\) Ltd](#)

## 5. Examples relating to repute.

It is important to remember that each of these appeals was decided on its own particular facts. These decisions must not be regarded as precedents.

[2000/15 D Murphy](#) (Loan of disc)

[2000/27 P Brown](#) (Use of out of date discs)

[2000/36 C Clark](#) (Failure to notify changes)

[2000/41 HiKube Transport](#) (Misleading and incomplete statement in application for licence)

[2000/59 Dolan Tipper Services](#) (Failure to disclose conviction)

[2000/66 D Eccles](#) (Refusal to pay vehicle excise duty on vehicles engaged in work abroad)

[2001/7 Alkaline UK](#) (Persistent use of untaxed vehicles)

[2001/16 J Webb](#) (Lack of trust from multiple failings)

[2001/57 C Kilpatrick](#) (Fronting for father)

[2002/9 G Gollop](#) (Submission of false document to Traffic Commissioner)

[2002/18 UK Plant and Haulage \(Services\)](#) (Use of untaxed fuel)

(see also [2003/258 JD Cowan](#) (paragraph 6))

[2002/27 D Brodie](#) (Unauthorised operation)

[2002/39 Excellent Connections](#) (Co-operation with Traffic Commissioner in difficult area of law should be taken into account – provision of taxibus service with small vehicles – operator should have been given benefit of doubt)

[2002/75 Hazco Environmental Services](#) (Falsification of hours)

[2004/255 M Oliver](#) (Persistent non-compliance – serious breaches of drivers' hours regulations – subsequent application by son's wife a front for continued control by family)

[2004/314 Muck It](#) (fly tipping) (see [Chapter 17 Appeals from Tribunal](#))

[2004/362 Britannia Hotels](#) (Failure to attend Traffic Commissioner)

[2004/367 N&S Gillman](#) (Failure to disclose previous revocations)

[2004/426 EA Scaffolding](#) (Fronting generally considered)

[2005/50 Rush Travel](#) (Failure to heed police guidelines for buses at football matches)

[2005/87 P Duckmanton](#) (Falsification of maintenance records)

[2005/537 West Mix](#) (Unauthorised operation and false statements)

[2006/56 Paul Oven Transport](#) (Transfer of vehicles from one company to another to avoid regulatory action)

[2006/73 AG Everett](#) (Cabotage – permanent, not temporary, use in GB – relevant to GB licence holder's conduct)

[2006/313 D Lloyd](#) (False bank statements submitted with original application)

[2006/445 J & CM Smith](#) (use of vehicles on road while prohibition notices in force)

[2006/487 D & H Travel](#) (sexual harassment not relevant)

[2007/212 Huxley Travel](#) (concealment of insolvency – unauthorised use)

[2007/370 Phil Smith Transport](#) (disregard of restrictive covenant)

[2007/459 KDL European](#) (tachograph offences – need for deterrence)

[2011/34 Utopia Traction Ltd](#) (at paras 8 & 9). 'Fronting' defined.

[T/2012/71 Silvertree Transport Ltd](#) Fronting (see [Chapter 21 Decisions and Reasons](#) for quotations from both these decisions defining fronting and explaining why it is a serious matter.)

[T/2013/40 Southwaterstreet Ltd t/s SW Transport & Thomas McKinney](#)  
(Company whose sole director and shareholder is disqualified from holding or obtaining an operator's licence cannot satisfy the requirement to be of good repute, see paragraphs 15-16. The terms of paragraph 2 of Schedule 3 to the 1995 Act justify piercing the corporate veil).

[T/2018/48 BKG Transport Ltd, Whiteparish Transport Ltd and Others](#)  
(unauthorised use of vehicles owned by one limited company by another)

[T/2019/11 V Larkin Ltd trading as Olympic Scaffolding and Others](#)  
(UT rejected argument that failure to comply with request to produce maintenance documents was not as serious as operating vehicles in an unroadworthy condition)

[UA-2021-000333-T S & D Haulage Ltd](#)

Appellant company was incorporated a month after the husband of the sole director was notified that an investigation was to take place into his operator's licence. "Fronting" was suspected. Application refused on good repute grounds.

[T/2010/025 Skip It](#)

The power to make 'formal' findings of loss of good repute/loss of fitness to hold an operator's licence is limited to the holder of an operator's licence, and to Transport Managers, it does not extend to the directors of a company which holds an operator's licence or to partners in a firm which holds an operator's licence. But Traffic Commissioners are entitled, under paragraph 1(2)(b)(ii) of Schedule 3 to the 1995 Act to assess the conduct of directors or partners when deciding whether the company or partnership is of good repute.

## 6. Mandatory loss of Repute – Convictions & Road Transport Offences

Meaning of "serious offence" and "road transport offences" in para.2 Schedule 3 of 1995 Act as amended by 1999 Goods Vehicles Operators (Qualifications) Regs

[2000/9 & 10 Stevenson & Turner and McHugh v. DETR](#)

"We have endeavoured to set out the Department's submissions in full not only because of their importance but also because they are likely to have application in other cases. We have no hesitation in accepting these submissions, which make sense of a difficult area of law. At the risk of repetition we now set out how we think the law should be applied in future:-

"Paragraph 2(a) of Schedule 3 of the Act

"The words "serious offence" are to be construed in accordance with para.3 of Schedule 3. The words "more than one conviction" mean what they say. They do not require different incidents or different days of commission or of hearing in court. If, for example, two convictions result in a sentence on each count of 2 months' imprisonment concurrent, imposed on the same day, neither conviction would qualify as "serious" within para.3(ii). If, on the other hand, as with Mr Stephenson and Mr Turner, the sentence was 4 months' imprisonment on each count concurrent, then each conviction qualifies under para.3 and the combination of two or more qualifies under para. 2(a). We think it immaterial that the convictions were on the same day at the same court. On any view the second conviction makes the breach of the law the more serious, since the additional conviction indicates a repetition of wrongdoing which properly affects the issue of general good repute.

"Paragraph 2(b) of Schedule 3 of the Act

"The words "road transport offences" must be construed in the light of the 1998 Directive and considered separately from the general provisions for "serious offences" in para.2(a) and para.3. The Traffic Commissioner has a discretion and para.2(b) is to be read "convicted of road transport offences which in the view of the Traffic Commissioner are serious in the context of the offences set out in paragraph 4". As above, more than one conviction is required but this may have arisen from a single hearing or incident. In any event the Traffic Commissioner must consider each conviction separately to determine its seriousness."

(see also [2001/32 M Moseley](#), (paragraph 5)

[2001/74 B Clark](#) (paragraph 4)

[2004/81 C Roffery](#) (paragraph 3, none of convictions were for serious road traffic offences, allowed)

[T/2012/34 Martin Joseph Formby t/a G & G Transport](#) (at paragraphs 11-13)

Uncertainty about the term of imprisonment that triggers mandatory loss of good repute as a result of a conviction for a serious offence can now be resolved. It is and always has been a term of more than three months imprisonment. The statutory history leading to that conclusion is as follows:-

- (i) As originally drafted paragraph 3(2)(a) of Schedule 3 to the 1995 Act provided that the first of the relevant punishments was “*a sentence of imprisonment for a term exceeding three months*”.
- (ii) Following the passing of the Criminal Justice Act 2003 paragraph 3(2)(a) was amended so the it read: “*a sentence of imprisonment for a term of 12 months or more or, before the commencement of s. 181 of the Criminal Justice Act 2003, a term exceeding 3 months*”.
- (iii) Unfortunately when the amended version of paragraph 3(2)(a) was published in the Road Traffic Encyclopaedia it read as follows: “*a sentence of imprisonment for a term (not) of 12 months or more or, before the commencement of s. 181 of the Criminal Justice Act 2003, a term exceeding 3 months*”. The word “not” in brackets and underlined is a misprint, which must be ignored because it does not feature in the consequential amendments set out in the relevant Schedule to the 2003 Act. It is to be hoped that this will be corrected at the earliest opportunity.
- (iv) No commencement order, in relation to s. 181, was ever made under the 2003 Act. As a result that section has never been brought into effect.
- (v) Section 89 of the Legal Aid and Punishment of Offenders Act 2012 provides that s. 181 of the 2003 Act is to be “*omitted*” from that Act. This expression has presumably been chosen because it removes a provision that has never come into force.
- (vi) Paragraph 8 of Schedule 10 to the 2012 Act provides that in paragraph 3(2)(a) of Schedule 3 to the 1995 Act, for the words: “*of 12 months or more*” to the end there be substituted: “*exceeding 3 months*”. In other words this takes the position back to the original starting point. But if the misprint is not removed Schedule 3 as set out in the Encyclopaedia will state the opposite of what the law really is.

A suspended sentence is a sentence of imprisonment. It follows that a suspended sentence of more than three months imposed for two or more offences in GB (only one is necessary in NI) results in automatic loss of good repute.

[T/2014/50 Andrew Harris t/a Harris of Leicester](#) (paragraphs 10 & 11).

Comparison between position of individual and of company – serious offences – penalties imposed only on director – proportionality not relevant unless stale

[2008/580 TS Dhaliwal](#)

Proportionality may now be relevant under Article 6(2)(a) of Regulation 1071/2009. In [T/2018/01 David King trading as Military World](#) (paragraphs 19 to 21), the Upper Tribunal, while expressing uncertainty as to whether the principle of proportionality was applicable, noted that [2008/580 TS Dhaliwal](#) preceded the 2009 Regulation and concerned differently-worded provisions; and proceeded to consider proportionality. In [T/2018/3 Yvonne Bartram](#), the Upper Tribunal stated that it had to proceed on the

basis that the Article 6(2)(a) does apply, there being no respondent to argue that it does not (paragraph 18).

Spent convictions should not be referred to or taken into account – Traffic Commissioner has discretion to disregard others – proportionality

[2003/200 AB](#) (paragraphs 4-6)

[2000/55 ML Smith](#) (Rehabilitation provisions considered at paragraphs 5 & 6 approach to spent convictions, paragraphs 7 & 8)

[2005/118 M & J Tinworth](#) (paragraph 4, Lapse of time since convictions disregarded because of delay in notification. Traffic Commissioner correct.)

[2005/239 JR Williams](#) (paragraph 7)

Rehabilitation period not extended by further ‘summary only’ offence

[2009/530 Boomerang Travel](#)

“Serious convictions” are not necessarily “notifiable” as defined in Schedule 2 of 1995 Act

[2001/44 N Hazel](#)

Where good repute has been lost as a result of convictions Article 6.3 of Regulation 1071/2009 is important because it provides that the requirement to be of good repute cannot be satisfied until a rehabilitation measure or measure having equivalent effect has been taken.

[T/2012/34 Martin Joseph Formby t/a G & G Transport](#) (see paragraphs 14-16)

‘Road Transport Offence’ is defined in paragraph 4 of Schedule 3 to the 1995 Act as: “an offence under the law of any part of the United Kingdom relating to road transport”. The paragraph then goes on to make particular reference to, amongst other things, offences relating to drivers’ hours of work and rest periods and road or vehicle safety.

[T/2014/72 Ian Russell Nicholas t/a Wigan Container Services v Secretary of State for Transport](#) (paras 37-39).

[T/2015/09 Richard & Sylvia Jones t/a Acorn Skips](#) (paras 6 & 7).

## 7. Unfair competition

An operator who competes unfairly is likely to find that his good repute is called into question.

[NT/2013/82 Arnold Transport & Sons Ltd v DOENI](#) At paragraph 19 the Tribunal said:

*“19. It was an offence intended to obtain an unfair advantage in relation to the Appellant’s competitors. The fact that it is now asserted that it did not achieve that purpose should, in our view, carry little if any weight. One reason is that it is the underlying intention that matters. Another reason is the potential impact of unfair competition on other operators. The impact of unfair competition is insidious in that it gradually and subtly undermines the confidence of compliant operators that their competitors will comply with the regulatory regime and thus compete fairly. What matters is the perception that other operators are competing unfairly not whether they are achieving any benefit as a result. Once rumours, of unfair competition*



*spread, (or clear evidence of it becomes apparent), the assumption will be made that it must be advantageous because there would be no point in running the risks involved if it was not. It is also corrosive because once rumours of unfair competition, (at the very least), begin to spread the perception that some operators are competing unfairly, (whether or not they profit by doing so), has a damaging effect. It means that normally compliant operators will feel tempted to 'cut corners' in relation to the regulatory regime in order to remain in business. Some may decide to resist that temptation but others are likely to succumb. The end result, if swift and effective steps are not taken to stamp out unfair competition, is that the operators who are most determined to remain compliant will be at greatest risk of being put out of business, even though they are the very operators who most deserve to remain in the industry. Trust, (whether between operators and the Traffic Commissioner or between operators themselves), is all too easily destroyed. Rebuilding it, if that is even possible, is likely to be a long and slow process".*

## 8. AdBlue Emulators

The appeals of [T/2018/20 Midland Container Logistics and James Donlon and T/2018/28 D K Barnsley & Sons Ltd](#) concerned the use of AdBlue emulators. Five questions were posed:

1. whether the fitting of an emulator can be for any purpose other than to give the misleading impression that engine emission standards are being met;
2. whether such an act can/should be categorised as “dishonest” or “deceitful”;
3. whether the fitting of an emulator is in itself unlawful;
4. whether a recording of excessive emissions is required before adverse findings can be made arising out of the fitting of such a device;
5. whether in principle, the fitting of an emulator can/should be compared to the fitting of a magnet to a tachograph.

On question 1, the Upper Tribunal said (paragraphs 31 to 33):

“We are satisfied that there are three reasons for fitting an active SCR/AdBlue emulator. The first is to disable the SCR system to avoid the need to use AdBlue at all; the second is to avoid the possibility of the vehicle going into limp mode if the vehicle runs out of AdBlue (both of which involve financial outlay); the third is to avoid the need to remedy an existing defect in the SCR system, or to prevent the vehicle going into limp mode if a defect develops, thus avoiding the cost of expensive repairs which other, reputable operators undertake as a matter of course. All of the identified reasons involve an element of financial gain and competitive advantage over other compliant operators.

The Appellants contended for a fourth reason about which there was no evidence in the five appeals, namely, that an emulator can be fitted to the OBD system to ensure that a vehicle does not enter limp mode for reasons unconnected to the use of AdBlue and/or the SCR system. As we have made clear in paragraph 25 above, the result of any functioning emulator being fitted to the OBD system is to actively interfere with the emissions control system and it is accepted on behalf of the Appellants that an unintended consequence of an emulator fitted for reasons unconnected to the use of AdBlue and/or the SCR system is that it will prevent the vehicle entering into limp mode if the AdBlue runs out and of course, if any of the component parts of the SCR system fails.

We find that in all four scenarios, a misleading impression is given that a vehicle's SCR system is functioning correctly when it is not and if there is positive evidence that emissions are not being controlled then the misleading impression is that the SCR system is controlling emissions when it is not."

On question 2, the Upper Tribunal said (paragraphs 36 and 37):

"We are satisfied that once it is established by the DVSA that an operator was aware that a working device had been fitted to the SCR wiring loom or the OBD system of a vehicle, the motivation for fitting such a device is peculiarly within the knowledge of the operator. The irresistible/overwhelming presumption is that an emulator will have been fitted for the purpose of defeating the SCR/emissions system, the torque limiter being an integral part of that system. It is not for the DVSA to establish an alternative motivation which in any event, is peculiarly within the knowledge of the operator. We are satisfied that in the event that the DVSA can satisfy the TC that a working emulator was fitted to a vehicle, then it will be for the operator to persuade the TC that it was not fitted to deliberately defeat the emissions control system... We agree with the SofS's submissions being satisfied as we are that the fitting of an emulator should be categorised as "*dishonest*" or "*deceitful*" provided the requisite findings of facts are made in relation to knowledge."

On question 3, the Upper Tribunal said (paragraph 18):

"In short, an emulator can be fitted to an off-road vehicle and to a vehicle intended for export to a country outside the EC provided it is not operated on a public road within the UK in the interim in that condition. It is not unlawful for a non-working emulator to be fitted to a vehicle although the presence of a non-working emulator begs two questions: why was it fitted and why is it still fitted? For an offence to be made out under regulation 61A(2) of the [Road Vehicles (Construction and Use) Regulations 1986] either evidence of actual emissions levels of the vehicle need to be evidenced which are in excess of the permitted levels for the vehicle or evidence produced that the SCR system had been disabled supported by expert evidence that emissions limits would have been exceeded."

On question 4, the Upper Tribunal said (paragraph 39):

"We reject the submission that a breach of emissions limits must be established, finding as we do that the DVSA's approach to emulators set out in paragraphs 21 and 22 above is a reasonable and proportionate response to the issue and that the issuing of an "S" marked prohibition when an emulator has been found with positive evidence of the SCR system having been affected is sufficient for adverse findings to be made by a TC."

On question 5, the Upper Tribunal said (paragraph 44):

"The use of an emulator and a tachograph interference device both result in the creation of a misleading impression. In the first instance, the impression is that a Euro IV+ vehicle is controlling its NOx emissions in line with the applicable standards when in fact the emission control system is redundant and in the second instance, the misleading impression is that the driver is or had been driving within permitted legal limits. However, whilst a legitimate comparison can be drawn as a result of a greater risk of harm through interference with vehicle equipment that is specifically designed to reduce those risks, the SofS has rightly conceded, that it is a matter of degree, there being a qualitative difference in the nature of the risks involved in the two courses of conduct and that a strict comparison is not a fair one. We agree."



## 9. Transport Managers

One of the statutory requirements for becoming a transport manager is good repute, (see s. 14ZA (3)(a) of the 1981 Act, s. 13A(3)(a) of the 1995 Act and s. 12A(3)(a) of the 2010 Act, as amended. In the case of the first two Acts good repute is to be determined in accordance with the relevant paragraphs of Schedule 3 to each of those Acts. In the case of the 2010 Act good repute is to be determined “in accordance with regulations and Article 6 of the 2009 Regulation”, (see The Goods Vehicles (Qualifications of Operators) Regulations (Northern Ireland) 2012).

[T/2014/50 Andrew Harris t/a Harris of Leicester](#) at paragraph 17 the Tribunal said:

*“Given the importance attached to operators complying with the regulatory regime and given that transport managers must: “effectively and continuously manage the transport activities of an undertaking holding an operator’s licence”, it seems to us that whether or not an individual has the character, personality, ability and leadership qualities to ensure compliant operation as an operator or to effectively and continuously manage the transport activities as a transport manager is a factor which can, properly, be taken into account when assessing good repute. In our view the point was well made by the Traffic Commissioner for Scotland, who is quoted at paragraph 2(xii) in [T/2014/42 Brian Robert Cutmore](#) as saying: “I cannot think of any rehabilitative measure which would restore the attitude of mind and fortitude towards compliance which is an essential characteristic for a transport manager”. In our view similar considerations apply in the case of an individual who is either an operator or the directing mind of an operator”.*

## 10. Restricted Licences

[T/2013/07 Redsky Wholesalers Ltd](#)

On an application for a restricted licence the T C is required by s. 13(2) of the 1995 Act to consider whether, amongst other things, the requirements of s. 13(4) are met.

That sub-section provides that the applicant “*must 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 paragraph 1(e) or (f) of Schedule 2 or (b) any conviction required to be notified in accordance with section 9(1)*”.

Section 8(4) creates a general obligation requiring a person applying for a licence to “*give the T C any further information which the T C may reasonably require*”. It also creates a specific obligation to give the T C any of the information specified in paragraph 1 of Schedule 2, if the T C requires it.

The relevant parts of Schedule 2 define (a) the persons whose activities can be taken into account and (b) the ‘relevant activities’ covered by the schedule. It is the extent of these two definitions that led the Tribunal to conclude that ‘fitness to hold a licence’ is not a significantly lower hurdle than good repute. Since the requirement that an operator holding a restricted licence is ‘not unfit to do so’ is a continuing requirement it is not inappropriate, if revocation is being considered, to consider what are generally known as the “*Priority Freight*” and “*Bryan Haulage*” questions, (see, [Chapter 19 Decisions and Reasons](#)).

Followed in [T/2013/26 Vince Larkin Ltd](#) (paragraph 5); and see also [T/2018/10 C Ingram trading as T.I.P. Skips](#) (paragraphs 41 to 43) for discussion on distinction between “fitness” and “repute”.

[T/2018/10 C Ingram trading as T.I.P. Skips](#) (paragraph 44)

The Upper Tribunal held that “activities”, as referred in s.13B of the 1995 Act, was not limited to activities that have been the subject of the TC request for information.

## 11. “Self-employed” drivers

An operator’s employment arrangement with its drivers could be relevant to repute. In [T/2019/54 Bridgestep Ltd and Tom Bridge](#), the Upper Tribunal said (at para.25):

“Turning then to the employment status of the drivers, whilst the Appellants now rely upon documents showing that many LGV drivers classify themselves as self-employed within the UK, that information is of little assistance without an analysis as to which sectors of the industry those drivers are deployed, for example, how many are employed in parcel delivery? The legitimacy or otherwise of a driver’s self-employment status is fact specific and as the Factsheet produced by the RHA on self-employment contained within the bundle makes clear:

*“Unless they are an owner-driver, it is very rare for a lorry driver to be legally “self-employed”.”*

The company’s drivers in this instance were not owner-drivers and the clauses in the contract which were designed to give the drivers a degree of control over the vehicles provided to the drivers by the company and over their work, for example, by being entitled to provide another driver as a substitute, were fundamentally undermined by the Driver’s Handbook. We repeat, there is nothing before the Tribunal to confirm that the arrangement between the company and its drivers was compliant with the HMRC guidelines. In his witness statement, Mr Bridge avers that he was aware of legal issues in relation to the arrangement the company had with the drivers as a result of a number of “*blue chip*” companies enquiring as to whether the company was “*HMRC compliant*”. This was in 2018. Paragraph 21(a) above summarises Mr Bridge’s evidence as to the company’s response to those inquiries. It was unsatisfactory.”

Then, at paragraph 26:

“We are satisfied that the TC’s determinations about the company’s arrangements with its drivers are beyond criticism. This was a bad case in which the company and transport manager had made a conscious decision to enter into an arrangement with the company’s drivers which was highly questionable if not a sham. The reasons for doing so were anti-competitive being as they were, concerned solely with the cost of employing the drivers and by reducing that cost, gaining a competitive advantage over other compliant operators. Whilst the vast majority of new operations make the right decision to employ their drivers, paying national insurance, pension contributions, holiday and sickness entitlement, these Appellants did not do so. The consequence of that decision was that the company and the transport manager felt unable to give any instruction to drivers whether it be in relation to route planning or otherwise and as a consequence, were unable to have continuous and effective management of the transport operation. That is plain and obvious from the contract of services that was later provided to the TC with some of the clauses set out in

paragraph 13 above. In short, the company and transport manager had abdicated their responsibility for ensuring that the transport operation was compliant and safe in order to save money. This was the real mischief that was revealed during the public inquiry.”

## Chapter 8 Financial Standing

### 1. Standard Licences

Section 13A(2)(c) of the 1995 Act and section 14ZA(2)(c) of the 1981 Act each provide that an applicant for a standard operator's licence must be of appropriate financial standing "as determined in accordance with Article 7" of Regulation 1071/2009.

Article 7(1) of Regulation 1071/2009 makes it clear that this is a continuing obligation. If at any time it appears to the Traffic Commissioner who issued the licence that the licence holder no longer satisfies this requirement revocation of the licence is mandatory, (see, [Chapter 12 Revocation, Suspension and Curtailment](#)).

### 2. Senior Traffic Commissioner's Statutory Guidance

On "Finance" can be found at:

<https://www.gov.uk/government/publications/traffic-commissioners-finance-march-2019>

On "Legal Entities" can be found at:

<https://www.gov.uk/government/publications/traffic-commissioners-legal-entities-november-2018>

### 3. Burden of Proof

Burden of proof generally - position at time of application and thereafter contrasted - see comments of Court of Appeal in Muck It case [in Chapter 17 Appeals from Tribunal 2005/486 McKillop Trucking](#)  
(see also [2006/56 Paul Oven Transport](#))

Burden of proof is on applicant for a licence  
[2003/292 AJ Transport](#)

An applicant cannot rely on potential ambiguities in correspondence from officials in the context of clear and unambiguous guidance notes.  
[NT/2016/2 365 NI Group Ltd](#)

### 4. Purpose

[2011/36 LWB Ltd](#) (paras 5-7)

"The purpose of this requirement is spelt out in paragraph 2(1) of Schedule 3 to the 1981 Act, (the wording is identical to Schedule 3 to the Goods Vehicles (Licensing of Operators) Act 1995) which provides that:

*'Being of appropriate financial standing ..... consists in having available sufficient financial resources to ensure the establishment and proper administration of the business carried on, or proposed to be carried on, under the licence'.*

"The words '*the establishment and proper administration of the business*' should not be narrowly construed". It is a continuing obligation, which means that a 'snapshot' of the financial position is usually insufficient.

However, see now Article 7 of Regulation (EC) 1071/2009 which can be found at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:300:0051:0071:EN:PDF>

For the general effect of this Regulation see:

[T/2012/17 NCF \(Leicester\) Ltd](#) (at paragraphs 11 & 12)

*“11. Being of appropriate financial standing has always been considered to be a continuing requirement. In other words it is a requirement that the operator must satisfy for the duration of the licence. In our view this is now made crystal clear in Article 7(1) of Regulation (EC) No 1071/2009 of the European Parliament and of the Council, (“Regulation 1071/2009”), which provides: “In order to satisfy the requirement laid down in Article 3(1)(c), an undertaking shall at all times be able to meet its financial obligations in the course of the annual accounting year”.*

*12. The purpose of the requirement to be of appropriate financial standing is spelt out, in general terms, in recital 10 to Regulation 1071/2009, which provides: “It is necessary for road transport undertakings to have a minimum financial standing to ensure their proper launching and administration”. In our view ‘administration’, for the purposes of this Regulation, means the organisation and running of a haulage business which holds an operator’s licence. In particular the requirement is intended to ensure that vehicles can be operated safely because the operator can afford to maintain them promptly and properly.”*

This case goes on to set out five points that flow from the general effect of the Regulation:

- (i) The requirement to be of appropriate financial standing cannot be satisfied by evidence of a ‘snapshot’ of the financial position on a particular day. What is required is evidence that enough money is consistently available to satisfy the requirement, (see paragraph 14). Traffic Commissioners have recognised that this causes difficulty for new operators, they have devised appropriate ways to solve this problem.
- (ii) It is not necessary to show that the requirement is met 365 days each year throughout the duration of the licence. What matters is the overall average and the speed with which the balance available returns to a level which satisfies or exceeds the amount required, (see paragraph 15)
- (iii) The requirement to be of appropriate financial standing can only be met from assets which are available to pay bills as and when they fall due, hence the guidance that, for example, an account requiring more than 30 days notice should not be taken into account, (see paragraph 16)
- (iv) With specific and limited exceptions assets, (using the term widely), put forward to meet the requirement to be of appropriate financial standing must be owned by and in the name of the operator, (see paragraph 17).
- (v) While it might appear possible, in theory, to put forward physical assets in order to meet the requirement to be of appropriate financial standing the practical difficulties are such that it is unlikely to prove possible in practice, (see paragraphs 18-22)

See also [T/2021/38 Paula Jane Morris t/a Miss Bus](#) which sets out the law as to the financial standing requirement for public service vehicle licences and the application of Article 7 of the Regulation (paragraphs 17-28).

## 5. “Having available”: meaning

Requirement of financial standing and position of financial assessor explained

[2005/7 2 Travel Group](#)

“The words “having available sufficient financial resources” and “has available to him capital and reserves” were considered in the [JJ Adam case](#) (1992 D41) and this decision has long been regarded as the leading authority:

“In our judgment the opening words, namely “having available”, provide the key to the meaning of each expression. “Available” is defined as: “capable of being used, at one’s disposal, within one’s reach, obtainable or easy to get”. In other words an operator only has available financial resources or capital and reserves if he has money in the bank which is capable of being used, (ie. it is not already needed for the payment of debts in the ordinary course of the business) or an overdraft at his disposal in the sense that there is a balance undrawn before the limit is reached or he has debts which are obtainable because they are due and likely to be easy to collect or he has assets from which money is easy to get in the sense that the assets are items which can be readily sold without any adverse effect on the ability of the business to generate money, or he has some other way in which to come up with money at fairly short notice, should it be needed. The above should be regarded as examples and not as a comprehensive list.

“Whether or not an operator has available sufficient financial resources or has available capital and reserves is a question of fact and degree which has to be determined according to the circumstances of each individual case. For example two different operators might each have £50,000 in a bank account. If in the case of the first the money was deliberately kept in a deposit account, in case of emergency, there would be no difficulty in concluding that the operator had available financial resources or capital and reserves of that amount. If in the case of the second the money had been ear-marked to meet a VAT or tax bill, which was due in the next few days, there would be little difficulty in concluding that the £50,000 ought not to be included in any calculation of available financial resources or capital and reserves, because it would not meet the requirement of being available. Different conclusions could equally well be justified in the case of the sale of plant, particularly working vehicles. In the case of an operator operating at or near to capacity the outright sale of working vehicles is not a sensible way in which to raise money because it reduces the ability of the operator to operate efficiently and profitably and it means that the operator’s overheads would have to be borne by a smaller number of vehicles. On the other hand an operator who has, or may in the future, have surplus vehicles, may well be able to turn them into cash, if the second-hand market is good, without any adverse effect on the business. In the case of the operator who is working at or near capacity it would not be surprising if the value of his vehicles was excluded from the calculation of available financial resources or capital and reserves. In the case of the other operator it would be surprising if the opposite conclusion was not reached.”

[2006/111 Kent Coach Travel](#) At paragraph 13 the Tribunal said:

“We repeat and endorse the statement in [2005/7 2 Travel Group](#)



*that attempts to simplify or to explain the words in the statute are to be deprecated since these may lead to the application of incorrect criteria”.*

[T/2020/66 \(1\)Thandi Coaches \(Red\) Ltd \(2\) Amardeep Thandi](#) (para 15)

TC erred because he wrongly excluded the unaudited accounts “from consideration at all (as opposed to considering them and deciding what weight should be attached to them or deciding whether or not they revealed the existence of available funds).”

[2010/81 Natalie Hunt t/a Wild Stretch Limo](#) (paras 4-9)

Reliance on s.9 of the Partnership Act 1890, in the absence of a Statutory Declaration, and reliance on monthly deposits, without taking account of withdrawals, both rejected.

[2011/36 LWB Ltd](#) (paras 8 & 9) It is important to consider the quotation from JJ Adam in full and not to rely on parts of it out of context. It is the entity that holds the operator’s licence, which must satisfy the requirement to be of appropriate financial standing. In deciding whether or not it can do so it may be helpful to consider the question posed in paragraph 10, namely: *“Can the holder of the operator’s licence make an immediate decision to spend the money in question or must it first ask someone else or some other company, (through its directors) to make the money available?”*

When considering whether financial resources are available the TC is entitled to take into account that the applicant/operator has entered into an Individual Voluntary Arrangement, (“IVA”), with creditors. The consequences will depend on the circumstances of each individual case.

[T/2013/32 Ann Gillian Rowbotham t/a Ann’s Executive Coaches](#)

When the applicant for an operator’s licence is a limited company money in a bank account held in the name of one of the directors of that company is not ‘available’ to meet the requirement to be of appropriate financial standing because it is not the company’s money. The same principle would apply in the case of a company holding an operator’s licence if financial standing was in issue.

[T/2013/77 Hughes Bros Construction Ltd](#)

[T/2021/35 Kamil Kodzik Transport Limited](#) followed Hughes (above) in finding that the resources available on an American Express credit card which was in the Appellant’s personal name could not be considered as credit available to the company.

(see also [T/2019/76 Armthorpe Skips Ltd](#) (para.23) for principle applied in a restricted licence case, which was also followed in [T/2021/51 Belistore Limited](#) (para 7)).

In [T/2017/7 Michael Hazell \(No.2\)](#), the Upper Tribunal said (para.15):

“Our starting point is that financial standing can be demonstrated in a variety of ways and the total figure in any given case can be made up by a portfolio of different sources. The willingness of Traffic Commissioners to accept a particular source of funds which are said to be available will depend upon the facts of each individual case, the nature of the source of funds and the amount relied upon from that source. The most reliable evidence of available funds will be cash in either bank accounts or reserves which have been held over a period of time; the least reliable is undrawn credit card balances. There are other sources of available funding which fall in between those extremes. For example, factoring arrangements (or invoice finance agreements) may appear on their



face to be a suitable source of financial standing but much will depend upon the detailed terms of the arrangement. The reasons why Traffic Commissioners are rightly sceptical of an operator's reliance upon undrawn credit card balances are that the high interest rates charged on balances are not compatible or consistent with a viable business model and may place an unacceptable financial burden on the business. Further, because of those high interest rates, in all likelihood, the higher the dependence on credit cards to show financial standing, the less likely it will be that an operator will in fact use the facilities if required to do so because of the high cost of that borrowing. So, whilst credit card facilities may be "available" to an operator, Traffic Commissioners may also make an assessment of whether they are truly "available" in the sense that they will in fact be used. There is of course the issue of fair competition. To allow an operator to rely on a large credit card facility without having prudently built up a working reserve which can be relied upon to establish financial standing places that operator at an unfair advantage over those who have prudently built up their reserves and their operation over time."

In [UA-2022-000246-T Jay's Vehicle Movers Ltd](#), the Tribunal considered the method of calculation for the purposes of section 13A(2)(c), noting that the "mode of calculation as set out in Annex 5 of the STC: Statutory Document No.2: Finance "seems to us to be a straightforward, workable and in most cases fair way of going about things" and one the operator will be able to understand as the formula is set out in guidance. However, the Tribunal noted there may be cases where it may produce "an inaccurate and consequently unfair result" and where the mode of calculation is challenged "it is necessary to consider whether the mode of calculation employed has, in all the circumstances of the case, produced a fair and accurate result" (paragraph 16).

## 6. Revocation for lack of Financial Standing - Mandatory

Revocation for lack of financial standing is mandatory – proportionality does not arise see comments of Court of Appeal in [Anglorom](#) case in [Chapter 21 Appeals from Tribunal](#) and see [2005/7 2 Travel Group](#)

Revocation by TC not precluded by administration – provisions in Enterprise Act 2000 explained

[2008/410 Brian Hill Waste Management](#)

Revocation after non-receipt of correspondence from Area Office

[2007/192 L Reeder](#)

It is for the operator not the Traffic Commissioner to specify the number of vehicles for which authority is requested. If the operator is unable to satisfy the requirement for financial standing in relation to that number it is for the operator to decide whether to ask for a reduction in the number authorised. It is not for the Traffic Commissioner to curtail the licence to a number for which the operator can demonstrate financial standing.

[T/2012/17 NCF \(Leicester\) Ltd](#) (para 10)

[NT/2016/2 365 Group Ltd](#) (para 43)

However, it is open to a Traffic Commissioner, in an appropriate case, to grant a period of grace of up to 6 months under the provisions of Regulation 1071/2009. At the end of whatever period is granted the operator will be expected to demonstrate that the amount required will be met on a permanent basis, see paragraph 53 of the Senior Traffic Commissioner's Statutory Guidance on Finance, available at:-

<https://www.gov.uk/government/publications/traffic-commissioners-finance-december-2017>

[T/2021/52 Ian James Blackmur t/a IJB Transport](#)

The appellant had been granted the maximum period of grace of six months. The combined effect of the relevant legislative provisions is that the operator must satisfy the traffic commissioner of the requirements within the period of grace. There is no extension of time beyond the maximum period of six months permitted by Article 13.1(c) in order to supply the necessary evidence (paragraph 16).

When considering whether or not to grant a period of grace TCs are entitled to look for some tangible evidence, beyond mere hope or aspiration, that granting a period of grace will be worthwhile, and that there are reasonable prospects for a good outcome.

[T/2014/08 Duncan \(operator\) & Mary Mckee \(transport manager\)](#)

(paragraph7).

Revocation may be made for lack of financial standing even if earlier revocation for loss of repute has been stayed pending appeal

[2003/138 P Coakley](#)

## 7. Restricted Licences

There are important differences between the 1995 Act and the 1981 Act when considering the 'finance' required by an applicant for or the holder of a restricted licence.

**1995 Act.** Under s.13(2)(b) a TC can "*if he thinks fit*" consider whether the requirement of s. 13D is satisfied. In other words before considering whether the requirement is met the TC must first conclude, in the exercise of his discretion, that it is an appropriate case in which to consider whether the requirement is satisfied. It is important to note that s. 13D uses the expression "financial resources" not "financial standing" and that it is quite apparent that the two are not synonymous, see:

[T/2012/46 Pradeep Kumar Sharma t/a RS Fruitstore](#) (at paragraphs 6 & 11-14)

The importance of distinguishing between 'financial standing' as a mandatory requirement in relation to Standard licences and 'financial resources' a discretionary requirement for holding a Restricted licence was stressed, in relation to Northern Ireland, in the case of [NT/2015/15 Peter Martin Haughey](#)

**1981 Act.** There is a mandatory requirement under s. 14(2) for the TC to consider whether the requirements of ss 14ZB and 14ZC are satisfied. Since 'finance' is dealt with by s. 14ZB(b) there is no need in a case concerning a Restricted PSV licence for any exercise of discretion before considering 'finance'. The requirement for a restricted PSV licence is to "have appropriate financial standing" but "as determined in accordance with paragraph 2 of Schedule 3 to the 1981 Act" rather than in accordance with Article 7 of EU Regulation 1071/2009, which is the requirement for a standard licence.

## 8. Miscellaneous points

It may be unfair to refuse a short adjournment to permit financial evidence to be obtained if readily available – proportionality in such circumstances considered

[2005/7 2 Travel Group](#) (paragraph 14)  
[2005/306 James Scaffolding Ltd](#) (TC should have assisted in identifying resources)

Restricted licence – unpaid fines of director not a relevant activity to be taken into account in considering financial resources

[2002/24 McFletch Hire Services](#)

It is not acceptable if monies are in wrong bank account

[2003/315 JJ McCaffrey](#)

[2004/373 Rai Transport](#) (Group accounts)

[2004/383 Blue Arrow](#) (It is the company applying for an operator's licence which has to meet the requirement to be of appropriate financial standing).

TC stated that intended to leave issue of financial standing to one side while considered other matters but then made adverse findings on it in his decision without having invited evidence or submissions

[2001/11 Pagoda Travel](#)

[2002/24 McFletch Hire Services](#) (paragraph 5)

(see also [2006/111 Kent Coach Travel](#) at paragraph 11)

Lack of cooperation by Area Office

[2005/473 EB Enterprise Waste Management](#) (paragraphs 5 & 6)

[2005/423 Hillside Traders](#) (paragraphs 3 & 4)

Traffic Area Office required wrong amount

[2005/547 Booze Cabin](#)

Bank statements – “summary” and “original”

[T/2018/09 Enviro Kleen \(Scotland\) Limited](#) (paragraph 7)

Subsidiaries – Reg 30(7) of Goods Vehicles (Licensing of Operators) Regulations 1995

[T/2018/68 D&A Freight Logistics Ltd](#) (paragraphs 50-55)

Not in the interest of justice for the Upper Tribunal to grant a period of grace to draw funds in circumstances where it was open to the appellant to do so earlier.

[T/2018/17 North Warwickshire Travel Ltd \(no 2\) and Michael James](#)

“We appreciate that, from Mr James’s perspective, it appears a small step for the Tribunal to grant a period of grace and, if we do not do so, Mr James will lose his business. In assessing the proportionality of our decision, we have born in mind the serious consequences for Mr James. However, we are entitled to have in mind the interests of the administration of justice. We would need to remit the case to the OTC to oversee whether or not Mr James drew funds. The OTC is a public body with limited resources. Its resources are not appropriately spent monitoring non-compliant operators who have failed to take steps which could have been taken.” (para.37)

“Granting a period of grace in such circumstances might serve to encourage a strategic approach to the Tribunal and would be contrary to the co-operation and openness which the TC and the Tribunal expect in this regulatory sphere.” (para.38)

Department entitled to examine whether operator had sufficient financial resources notwithstanding the issue of the licence on renewal

[NT/2019/40 Gerald Hynds \(paragraphs 31-39\)](#)

Unaudited accounts approved by a director (as compliant with the Companies Act). UT considered Article 7 of Regulation EC No. 1071/2009 and expressed its view that (i) the terms of Article 7 are not met by unaudited accounts signed by a director (as compliant with the Companies Act) (para 16) and (ii) that Article 7 of the Regulation does not prescribe “an inflexible and exhaustive list of items of evidence which a State is able to take into account when deciding whether the test for financial standing is met.” (para 19)

[T/2020/66 \(1\)Thandi Coaches \(Red\) Ltd \(2\) Amardeep Thandi](#)

Application of STC's Contingency Statutory Document - STC erred in deciding there was no power to extend the period of grace given terms of Regulation 2020/698 and the Contingency Statutory Document.

[T/2021/38 Paula Jane Morris t/a Miss Bus](#)

## **Chapter 9 Professional Competence and Transport Managers**

### **1. Heavy Goods Vehicles**

Section 13A(2)(d) of the 1995 Act provides that the requirement to be professionally competent is to be determined “in accordance with paragraphs 8-13 of Schedule 3”. Section 13A(3) of the 1995 Act sets out the requirement to have a designated Transport Manager, as required by Article 4 of Regulation 1071/2009. The criteria, which a Transport Manager must now meet, are set out in s. 13A(2) and Article 4. Article 8 of Regulation 1071/2009 makes further provision in relation to professional competence.

### **2. Public Service Vehicles**

Section 14ZA(2)(d) of the 1981 Act provides that the requirement to be professionally competent is to be determined “in accordance with paragraphs 3, 4 and 6 of Schedule 3”

Section 14ZA(3) of the 1995 Act sets out the requirement to have a designated Transport Manager, as required by Article 4 of Regulation 1071/2009. The criteria, which a Transport Manager must now meet, are set out in s. 14ZA(3) and Article 4. Article 8 of Regulation 1071/2009 makes further provision in relation to professional competence.

### **3. Senior Traffic Commissioner’s Statutory Guidance**

On “Transport Managers” can be found at:

<https://www.gov.uk/government/publications/traffic-commissioners-transport-managers-november-2018>

### **4. Burden of Proof**

Burden of proof - see comments of Court of Appeal in Muck It case in [Chapter 17 Appeals from Tribunal](#)

See [2006/56 Paul Oven Transport](#)

### **5. Good Repute of Transport Manager**

An operator who is not personally ‘professionally competent’ can nevertheless satisfy this requirement: *“if and so long as he has as the transport manager of the transport undertaking which he carries on an individual who is – (a) of good repute and (b) professionally competent”*, see paragraph 9 of Schedule 3 to the 1995 Act.

In assessing whether a person put forward as a Transport Manager is of good repute paragraphs 1-5 of Schedule 3 to the 1995 Act, (concerning the good repute of operators), have effect to determine the good repute of a Transport Manager, see paragraph 12 of Schedule 3 to the 1995 Act.

In assessing the good repute of Transport Managers reference should be made to [Chapter 7](#) above.

In [T/2014/25 & 26 H. Sivyer \(Transport\) Operator and Simon Sivyer \(Transport Manager\)](#) the TC found that the Transport Manager had lost professional competence but had not lost good repute. Having considered, (in paragraphs 15-17), the European and domestic legislation and the decision in [T/2012/71 Silvertree Transport Ltd](#) the Tribunal concluded, (paragraph 18) that:-

*“The cumulative effect of all this is that - if an individual must be regarded as professionally competent if he or she has passed the relevant written examination or is the holder of another recognised qualification etc. - then this is not something that can be ‘lost’ in the same way that repute can be lost”.*

The Tribunal went on to explain, at paragraph 20, that where a transport manager has substantially failed in his or her duty to maintain continuous and effective control of an operator’s fleet of vehicles the remedy is to consider and where appropriate, find loss of good repute as a transport manager. In paragraphs 21-24 the Tribunal set out the consequences of such a finding, namely: (i) mandatory disqualification, (ii) inability to work as a transport manager, (iii) the CPC held by a disqualified transport manager is “not valid” for the period of the disqualification, (iv) unless a rehabilitation measure is imposed as a pre-condition to applying to cancel or vary an indefinite disqualification the validity of a disqualified transport manager’s CPC will be restored once the term of the disqualification expires.

#### [T/2014/42 Brian Robert Cutmore](#)

In the course of her decision the TC for Scotland said of the Appellant, in his capacity as transport manager:

*“ I cannot think of any rehabilitative measure which would restore the attitude of mind and fortitude towards compliance which is an essential characteristic for a transport manager”.*

The Tribunal upheld the TC’s finding that the Appellant had failed in his duty to maintain continuous and effective control of the operator’s fleet of vehicles and had, thereby, lost his good repute as transport manager. It upheld an indefinite disqualification, pointing out the right to apply to have it cancelled or varied.

This approach to the good repute of Transport Managers is supported by the decision in [T/2015/49 Matthew Reynolds v Secretary of State for Transport](#) where the Tribunal concluded, after argument on both sides, that the decision in Sivyer, above, was correct, and that the good repute of a Transport Manager extended beyond questions of integrity so that it was appropriate to consider, under the heading of good repute, any matter relevant to the fitness of an individual to act as a Transport Manager.

Once a finding that a TM has lost good repute has been made, (or upheld by the Tribunal), disqualification from acting as a TM is the mandatory consequence of the wording of paragraph 7B(2) of Schedule 3 1981 Act, paragraph 16(2) of Schedule 3 to the 1995 and paragraph 15(2) of The goods Vehicles (Qualifications of Operators) Regulations (Northern Ireland) 2012. In particular there is no opportunity, after a finding of loss of good repute, to consider whether or not disqualification is proportionate. Instead the question of proportionality is expressly required to be considered when deciding whether or not to make a finding of loss of good repute, see paragraphs 7B(1), 16(1) and 15(1) of the provisions identified above. To justify a finding of loss of good repute the matters found proved must be such that disqualification is a proportionate regulatory response. See:



[T/2015/39 Firstline International Ltd & William Lambie v Secretary of State for Transport](#)

## 6. Professional Competence of Transport Manager

Whether or not a Transport Manager is professionally competent is demonstrated by the possession of a Certificate of Professional Competence, ('CPC'), acquired by passing a compulsory written examination or by some other officially recognised means, e.g. an Acquired Rights Certificate under the Road Transport Operator Regulations 2011.

Despite the apparent inclusion in paragraph 15 & 16 of Schedule 3 to the 1995 Act of a power to make a finding of loss of professional competence neither TCs nor the Tribunal have any such power in relation to a person who is the rightful holder of a valid CPC. To the extent that they purport to empower a TC to make a finding of loss of Professional Competence paragraphs 15 and 16 of Schedule 3 to the 1995 Act must be disregarded. The reasons for reaching this conclusion are fully explained in [T/2015/49 Matthew Reynolds v Secretary of State for Transport](#) where the relevant legislation is set out. However, matters relevant to an individual's fitness to act as a Transport Manager may be relevant to the individual's good repute as a Transport Manager, see section 5 above. In [T/2015/49 Matthew Reynolds v Secretary of State for Transport](#) the appeal was allowed and the finding of loss of professional competence was set aside but the Tribunal went on to conclude that the evidence showed that the Transport Manager was unfit to fulfil that role and was therefore not of good repute as a Transport Manager, even though there were no doubts as to his integrity. A finding that the Transport Manager had lost his good repute was substituted and the disqualification remained unchanged.

In [T/2017/04 Patricia Bakewell](#), the Upper Tribunal held that the Traffic Commissioner has no power to make a finding that an Acquired Rights Certificate was null and void *ab initio* and thus removing professional competence unless the ARC was obtained by fraud or misrepresentation which was not the case in this instance. In the alternative, the Upper Tribunal found that the Traffic Commissioner misinterpreted and misapplied Article 9 of EC Regulation 1079/2009, by considering the "10 year rule" only applied to periods where a person was licence holder or nominated transport manager on a licence.

## 7. Change of Transport Manager

[UA-2021-000018-T, Egertons Recovery Group Limited](#)

"The application to add a transport manager to a license using the TM1 Form is not an administrative step. It is necessary to enable TCs to discharge their regulatory functions so as to be satisfied [as to professional competence and the suitability of a designated transport manager] before an application for a licence will be granted and before the TC can be satisfied that an existing operator is/will be professionally competent and has nominated a suitable replacement." (paragraph 35).

[2011/36 LWB Ltd](#) (para16)

The use of form TM1(G) to notify a change of Transport Manager is important because the contents of the form, the documents required to support it and the declarations made at the end of it provide much of the material needed by a Traffic Commissioner



to decide whether or not a person nominated as a Transport Manager will be able to fulfil that role. If Form TM1(G) is not used Traffic Commissioners are entitled to insist on receiving the same information by other means.

The resignation or departure of a Transport Manager is a material change in circumstances which must be notified to the Traffic Commissioner within 28 days.

[2011/36 LWB Ltd](#) (para18)

The Upper Tribunal in [T/2018/35 Rashed Mahmood t/a Rashed Travels](#), adopting the approach in [2011/36 LWB Ltd](#), said (paragraph 16):

“[A] licence is not revoked on the ground that the TM1 application or certificate were not returned in time, but on the grounds that in their absence the TC will not be satisfied that the holder has regained professional competence by having a new transport manager who is of good repute and professionally competent. In such circumstances, the TC will presumably be satisfied that because of a loss of the original transport manager, the holder no longer satisfies the requirement of professional competence and mandatory revocation will follow. If a TM1 application and certificate have (sic) been provided but checks still remain to be made, presumably the TC, although not yet satisfied that professional competence has been regained, will not be satisfied that it remains lost.”

## 8. Position of Transport Manager

A transport manager cannot be a volunteer because a volunteer cannot establish the necessary genuine link to the operator. The relevant legislation and the practical considerations arising from those provisions was given detailed consideration in paragraphs 39-63 of:

[T/2015/40 Tacsí Gwynedd Ltd](#)

Position of transport manager considered

[2001/68 Dukes Transport](#) (paragraph 18 stressed the requirement of s. 58(1) of the 1995 Act namely that the TM must exercise: “*continuous and effective responsibility for the transport operations of the business insofar as they relate to the carriage of goods*”.

[2003/343 Anglorom](#) At paragraph 8 the Tribunal said:

*“It is difficult to envisage any situation where a Transport Manager could be considered to be in effective control of day to day operations when: all of the drivers live abroad; they are not permitted to enter the UK; they are employed by a drivers agency based in Romania; the Transport Manager cannot communicate with the them because of language barriers; discipline and enforcement must necessarily be left to others who are also based in Romania. We are satisfied that there was no evidence to show that Mr Briggs either on his own or with others, satisfied the requirements of s.58 of the Act and that as a result, neither the companies or Mr Briggs by virtue of his involvement in this operation, were of good repute”.*

The Appellant appealed to the Court of Appeal. For more detailed consideration of the position of Transport Manager see the passage quoted from the judgment of the Court of Appeal at – [Chapter 22 Appeals from Tribunal](#) but note but the Court of Appeal does not appear to have been referred to all the relevant authorities, in particular the appeal of [2003/258 J Cowan](#) (see below).

[2004/255 M Oliver](#) at paragraph 93 the Tribunal said:

*“Of course, we accept that a transport manager cannot do everything himself; but so far as his “continuous and effective responsibility for the management of the transport operations of the business”, as defined under s.58 of the Act, is concerned, this duty is personal to him and is non-delegable”.*

[T/2016/59 Adrian John Dalton](#) (paragraph 20) - Delegation is permissible, but it must be appropriate. In any event, it does not shift responsibility in the sense that a Transport Manager remains responsible for ensuring that delegated tasks are properly carried out.

[2006/252 A Hayden](#) at paragraph 8 the Tribunal said:

*“We have to say in answer to these points that the effect of s.58 of the Act is that there must be a direct contractual relationship between the operator and the transport manager. We were appalled by the Appellant’s conduct in requiring an operator to sign forms in blank. We do not think that it is appropriate for us to state the number of hours required per week for a transport manager to carry out his duties since these will depend on the facts of each case.*

If transport manager overridden by operator TM must give written warning and then resign, rather than carry on when unable to perform his duties

[2003/258 J Cowan](#)

*“The thrust of the case against Mr Fenny was the agreement with Mr Cowan to reduce his hours so that he became a transport manager in name only. This had been conceded by him in evidence (see paragraph 3(viii) above) and was then considered in detail. Mr Duckworth sought to persuade us that the reduction in hours was a matter between employer and employee and that it did not affect the performance of Mr Fenny’s duties. But we think that this approach wholly fails to recognise the position of a transport manager as set out in s.58(1) of the Act, as quoted in paragraph 3(x) above: in particular, we emphasise the words “continuous and effective responsibility for the management of the transport operations .....”. We think that the agreement to reduce hours reflects adversely on both Mr Cowan and Mr Fenny. The latter had accepted the position as transport manager and should have ensured that he did indeed do enough work so as to be able to comply with his duties. Instead of which he allowed himself to be used in name only. We regard the conduct of both Mr Cowan and Mr Fenny to have been a serious breach of their obligations.”*

Repute lost by transport manager of convenience in respect of vehicles operating abroad – lack of continuous and effective management

[2000/18 Euroline Transport](#)

Repute not lost by mere association with disqualified operator

[2005/136 P Tagell](#)

Need for notification of change considered - proportionality

[2005/205 Eddie Stobart](#)

If conduct to be considered at PI transport manager is entitled to notice under para.15(1) of Schedule 3 1995 Act

[2003/58 S Sowerby](#) (no notice)

[2008/92 GM Harrison](#) (deemed notice if sent to last known address)

But service of notice on transport manager of proceedings affecting his good repute satisfied by notice to company of which sole director was also transport manager – directory not mandatory

[2000/59 Dolan Tipper Services](#) (paragraph 6)

Repute of transport manager lost despite indication that absence at PI was accepted and that issue would not then be decided

[2006/192 S Shirley](#)

Application refused after failure to supply certificate of qualification of transport manager

[2004/21 Carway Haulage](#)

Need for UK Transport Manager of operator resident abroad

[2006/392 G Brandon](#) (paragraph 5)

[2006/405 Transclara](#) (paragraph 28, the Tribunal required the appointment of a second TM to undertake his duties at the Operating Centre)

Repute lost by the transport manager for two companies who were involved in licence disc swapping to circumvent order of curtailment in relation to one of them. The transport manager failed to demonstrate even a basic practical understanding of the fundamental role of a transport manager.

[T/2017/67 David Randle](#) (paragraph 27-28)

Repute lost by transport manager acting as a transport manager in name only

[T/2018/12 Maurice Dale](#) (paragraph 13)

[T/2021/30 Raymond Sheaf](#)

Repute lost by transport manager by failing to keep TC informed of material changes and lies to DVSA officers

[T/2018/29 Adam Hayes](#) (paragraph 23)

Inherited systems and pressure of work did not prevent loss of repute of transport manager. Transport managers should be aware of the provisions of paragraph 2 of Schedule 3 to the 1995 Act and the definition of “serious offence”.

[T/2018/46 Mark Clinton](#) (paragraphs 21-23 and 27)

## 9. Companies

In the case of a company the mere appointment of a new Transport Manager, (whether before an application for an operator’s licence or as an addition to or replacement for an existing Transport Manager) is not, on its own, sufficient to enable the company to meet the requirement to be Professionally Competent. The operator must satisfy the Traffic Commissioner that the person concerned is (i) of good repute, (ii) professionally

competent and (iii) is under contract to provide 'continuous and effective responsibility for the transport operations of the business'.

[2011/36 LWB Ltd](#) (para16)

## Chapter 10 Public Inquiries and Hearings

### 1. Requirement to hold a Public Inquiry

There are circumstances where the TC is required to hold, if duly requested, a PI before acting or exercising a function. [T/2016/55 Raymond Kyle Heard \(t/a Kyle's Executive Travel\)](#) sets out the position in respect of PSV cases – see paragraphs 14 to 17. Relevant notices must be given, e.g. Regulation 9 of the Public Passenger Vehicles (Operator's Licences) Regulations 1995 – see [T/2018/35 Rashed Mahmood t/a Rashed Travels](#) (paragraph 19). Similar provisions apply in HGV cases under the Goods Vehicle (Licensing of Operators) Act 1995 – see s.29(1), 35(1) and Schedule 3, paragraph 15(2A).

[T/2018/11 Skyrider Ltd](#) (paragraphs 31-32)

TC correct to refuse to hold a further PI in circumstances where an operator, having adverse findings made against it at a previous PI and being granted a period of grace, had failed to take the necessary steps to comply with regulatory requirements. Revocation was inevitable.

[T/2018/32 Atbus Ltd](#) (paragraphs 34)

The duty to hold a PI only arises upon a request for one. However, principles of natural justice will sometimes dictate that a PI should be held, in the absence of a request.

[UA-2022-000538-T Pamela Hibberd](#)

TC wrong to come to view that there had been no request for an inquiry when the appellant did request an inquiry be held in certain circumstances and the circumstances were present. The way the request was framed was not “an abusive approach to a request to hold an inquiry or one outside the statutory scheme or its purpose” (paragraph 32).

### 2. Notice of Hearing

In HGV cases see Schedule 4 to the Goods Vehicles (Licensing of Operators) Act 1995 and [2009/524 Ocean Transport](#)

“The provisions relating to the giving of notice to a public inquiry are set out in Schedule 4, Goods Vehicles (Licensing of Operators) Regulations 1995. By paragraph 1(1) the Traffic Commissioner is obliged to give 21 days' notice of the date and time fixed for the holding of a public inquiry. The date, time and place may be varied, but, if so, by paragraph 1(2) at least 21 days' notice must again be given. Paragraph 1(6) provides for seven days' notice in respect of an adjourned inquiry but this is of no relevance here since the earlier inquiry never began. However, paragraph 7 provides that if there has been an irregularity in the giving of notice ‘the Traffic Commissioner may nevertheless proceed with the inquiry as if notice had been duly given provided he is satisfied that no injustice or inconvenience would be caused’.”

See also the Senior Traffic Commissioner's Statutory Guidance on “Operating Centres, Stable Establishments and Addresses for Service” which can be found at:

<https://www.gov.uk/government/publications/traffic-commissioners-operating-centres-stable-establishments-and-addresses-for-service-november-2018>

### 3. Burden of proof

Position at time of application for a licence and thereafter contrasted - effect of Council Directive - see comments of Court of Appeal in Muck It case in [Chapter 22 Appeals from Tribunal](#) - previous decisions of Tribunal not followed

“Per Rix LJ:

“69. Turning back to sections 26 and 27 of the 1995 Act, I would conclude that for revocation to be possible under the former or mandatory under the latter, it is the commissioner who must be satisfied of the ground of revocation, and not the licence holder who must satisfy him to the contrary. That seems to me to be the natural way to regard both the language of those sections, and the situations contemplated in them. The context is that of a licence holder and the possible revocation of his licence. Revocation can only be done on some specified ground (section 26) or because one or other of the three fundamental requirements is no longer satisfied (section 27). Under section 26(4), the commissioner can only act if “the existence of” a ground comes to his notice. It is counter-intuitive to think of a licence holder being required to negative the existence of a ground raised against him. So with section 27. The commissioner must revoke if “it appears to him” that the licence holder is no longer of good repute or of appropriate financial standing or professionally competent. That seems to me to mean that the commissioner must be satisfied that the requirements are no longer fulfilled. If it had been intended to place the same burden on the licence holder as had been placed on the original applicant, then the same language as that found in section 13 would have been used.”

See [2006/56 Paul Oven Transport](#) (paragraph 15)

Burden of proving exemption that vehicle used mainly on private land is on operator (para.3 Schedule 3 1995 GVLO Regs)

[2001/58 GM Buckley](#)

Burden of proof in impounding cases – see [Chapter 18 Impounding](#)

### 4. Human Rights

Accepted by DETR that TC is a public authority and that proceedings involve determination of operator’s civil rights and obligations – held that such proceedings are not criminal – held also that the TC’s hearing was fair and public and that he is independent and impartial – in any event TC was subject to judicial control by the Tribunal which has full jurisdiction (see para.8 Schedule 4 1985 Act)

[2000/65 AM Richardson v. DETR](#)

See [2005/7 2 Travel Group](#) (paragraph 14)

(see also comments by Court of Appeal in Crompton case – [Chapter 22 Appeals from Tribunal](#))

### 5. Rules of Natural Justice

Non-disclosure of relevant documents available to TC but not supplied to operator – not seen until in appeal bundle – desirability of a check list.

[2001/39 BKG Transport](#)

“This is another appeal which demonstrates the need for careful housekeeping of documents. Mr Laprell referred us to Appeal 1997 J42 Starr Roadways Ltd. More recently the Tribunal has heard [Appeal 13/2001 Frigoline Ltd](#) and Appeal

[41/2001 Tate Fuel Oils Ltd](#). We recognise that during the course of his work it is an inevitability that a mass of material will cross a Traffic Commissioner's desk, including material which may have formed the basis for the administrative decision to refer a particular operator to a public inquiry. It would be impracticable for a Traffic Commissioner to have to attempt to disclose everything that he has ever seen in relation to a particular operator and Mr Laprell did not suggest this. We agree that it is at the stage at which a decision is taken to refer an operator to a public inquiry that a line must be drawn. What the Traffic Commissioner is then required to do is to identify the evidence that is being relied upon at the public inquiry and to ensure that the operator is given notice so that he can properly deal with it, to avoid surprises. If as a matter of routine Traffic Commissioners were to produce a check list of the documents not only constituting their brief but also added subsequently we think that this problem is unlikely to recur. Our comments in Appeal [53/2001 Marilyn Williams t/a Cled Williams Coaches](#) should also be kept in mind: if eg. an amended schedule of prohibition notices has recently been sent to an operator, it is desirable that receipt is confirmed."

[2004/426 EA Scaffolding](#) (nondisclosure of documents must be raised in an amendment of notice of appeal to enable comment by Traffic Area Office and to avoid adjournment)

(see also: 1992 D 37 Wilton Contracts (London) Ltd.

[2001/13 Frigoline](#) (Paragraphs 9, & 10 need for disclosure of the whole, or at least the substance of documents.

Paragraph 11 need for list of documents seen by Traffic Commissioner)

[2001/41 Tate Fuel Oils](#) (paragraphs 12 & 13)

[2002/40 Thames Materials](#) (paragraph 10)

[2003/258 JD Cowan](#) (paragraphs 3 & 4)

[NT/2014/19 OC International Transport Ltd v DOENI](#) The disclosure requirements set out above impose an identical obligation on DOENI

Late attendance at the PI hearing

[T/2017/80 North Warwickshire Travel Ltd and Michael James](#)

Part-heard PIs

[T/2018/34 BETC Ltd](#) (paragraph 30)

Serious delay in decision making deprecated

[2005/523 Swallow Coach Company](#) (paragraph 6, delay nearly 8 months)

[2006/351 Caledonian Coaches](#) (paragraph 5, 16 month delay)

[2006/355 Ferguson Transport](#) (paragraph 16, delay of 6 months unacceptable but no evidence of actual or perceived prejudice, dismissed)

[NT/2017/16 Damien Toner](#) (paragraph 40, delay of 6 months)

[NT/2021/11 Trevor Cathers and Trevor Cathers Ltd](#) (paragraphs 23-26, delay of 4 years in processing application for standard international good vehicle operator's licence)

TC stated that intended to leave issue of financial standing to one side while considered other matters but then made adverse findings on it without inviting evidence or submissions

[2001/11 Pagoda Travel](#) (paragraph 3)

(see also [2002/24 McFletch Hire Services](#)) (paragraph 5)



Even though the word ‘adjournment’ was not used a strong indication that further evidence would be sought and the fact that the Appellant had not been requested to make a final submission and had not done so led the Tribunal to conclude that: *“especially where a person is unrepresented fairness requires clarity as to the process, the stage reached and what will happen next”*.

[T/2014/52 John Pilkington](#)

Reliance on evidence that was not the product or subject of examination, investigation, or presentation by any independent party nor the subject of any adversarial argument of opportunity for evidence in rebuttal (“descending into the arena”)

[UA-2021-000040-T Ram Logistics Ltd:](#)

“TC therefore erred in failing to afford the Appellant a fair procedure by carrying out her own review of the maintenance evidence/documentation produced and, in effect, acting as her own expert witness against the Appellant...in a hearing where the alleged defects she relied upon had not been previously identified or notified to the Appellant. (paragraphs 42 to 46)

Enquiries made by TC after conclusion of public inquiry were unfair

[2001/65 E Coakley](#) not published on website but see comments by Court of Session in [Chapter 17 – Appeals from Tribunal](#)  
[2004/407 PF White-Hide](#) (paragraph 5)

Ensuring fairness when TC makes own enquiries. TC asked for information and only made own enquiries when it was not provided. Operator correctly given opportunity to comment and allowed to request that PI should be reopened. Reliance on a further public document which operator would have found it difficult to contradict upheld but it would have been better to allow operator the opportunity to comment.

[T/2012/34 Martin Joseph Formby t/a G & G Transport](#) (at paragraphs 18 &19)

TC obtained information after the conclusion of the Public Inquiry and after the operator had failed to provide it having offered to do so, (held not improper). However, TC did not give parties an opportunity to comment on material that formed an important part of the decision, (held at the minimum the parties should have had the opportunity to make written comments and, if necessary, the Public Inquiry should have been re-convened). See paragraphs 12-15 of:

[T/2013/38 Hobart Court Property Management Ltd v John Kent & Valerie Kent](#)  
and

[T/2013/63 Balwant Singh Uppal t/a Professional Chauffeuring Services & PCS Limos Ltd](#) where in paragraph 24 the Tribunal said:

*“We can see no distinction in principle between cases where a Traffic Commissioner is proposing to come to conclusions on the basis of new material obtained through his own inquiries and cases where he proposes to come to conclusions adverse to an applicant or an operator on the basis of new material which that person has provided. We have used the word ‘adverse’ in the second half of this proposition to make an important distinction. Where, as here, an operator is unable at the Public Inquiry to satisfy the Traffic Commissioner of a statutory requirement such as financial standing but does so as a result of new material submitted after the end of the Public Inquiry there is no need to ask for comment and no*

*need to re-convene the Public Inquiry because the finding is favourable to the applicant or operator. Similarly where, as here, an operator asserts at the Public Inquiry that a conviction was reported and afterwards produces a copy of the letter in which he did so there is no need to ask for comment or to re-convene because the letter has simply confirmed the previously unsupported assertion made at the Public Inquiry. But where the new material, whether produced by the Appellant or discovered by the Traffic Commissioner, seems likely to play a part in reaching conclusions adverse to the applicant or the operator it is clear in our view that no firm conclusions should be reached without giving the person who may be adversely affected an opportunity to comment on and/or challenge what should, at that stage, be no more than provisional conclusions. If necessary the Traffic Commissioner must be prepared to offer to re-convene the Public Inquiry”.*

Failure to permit operator to comment on VOSA report  
[2005/357 J Bayne & Sons](#)

No power to make interim orders without hearing operator  
[2006/487 D & H Travel](#)

Non-attendance at PI following solicitor’s advice. If advice was incorrect, that is a matter for the client to take up with the solicitor, TC decision should not be overturned on appeal for error of law or fact.  
[T/2019/04 Thomas Malcolm](#) (paragraph 29)

## **6. Bias by Traffic Commissioner – The Correct test**

The position in relation to ‘perceived’ or ‘apparent’ bias was set out at paragraph 7 of [T/2014/72 Ian Russell Nicholas t/a Wigan Container Services v Secretary of State for Transport](#) in this way:

“In their written submissions the Treasury Solicitors Department referred to the definitions of bias to be found in two recent cases. In [Magill v Porter \[2001\] UKHL 67](#) it was said in relation to ‘apparent bias’ that: ‘*The question is what the fair-minded and informed observer would have thought, and whether his conclusion would have been that there was a real possibility of bias*’. In [Locabail \(UK\) Ltd v Bayfield Properties Ltd & another \[2000\] Q.B. 451](#) the Court of Appeal said that: ‘*... a real danger of bias might well be thought to arise ... if on any question at issue in the proceedings before him the judge had expressed views, particularly in the course of the hearing, in such extreme and unbalanced terms as to throw doubt on his ability to try the issue with an objective judicial mind (see Vakauta v Kelly [1989] 167 CLR 586)*’.”

In applying this test, it is important to bear in mind two points. The first is that what matters is the perception of the fair-minded and informed observer not the perception of the individual appellant or his advisers. The second concerns the nature of a Public Inquiry, as explained in paragraph 8 of [T/2014/72 Ian Russell Nicholas t/a Wigan Container Services v Secretary of State for Transport](#), quoting from paragraph 6 of [Susan Tattersall \[2013\] UKUT 0409 \(AAC\)](#), namely that:

“Public Inquiries are inquisitorial and Traffic Commissioners are entitled and, indeed, expected to test the case being made by those who come before them. Having read the transcript with care we accept that a different Traffic Commissioner might have conducted the Public Inquiries in a different way but we are not satisfied that what we have read discloses either actual bias or the appearance of bias on the part of the Traffic Commissioner. In our view it went no further than a healthy scepticism when testing the merits of this application”.

These points were reinforced in [T/2014/77 Leedale Ltd](#) where the Tribunal said, at paragraph 90:-

“Public inquiries are hearings conducted by statutory regulators whose functions are to ensure road safety, fair competition and compliance. The hearings are by necessity inquisitorial and one of the functions of TCs is to probe and test the evidence put forward by an operator. The approach of TC’s must be robust in those circumstances and they often have to deal with operators (like Mr Walkup) who are themselves robust and who object to any form of intrusive scrutiny of their operations and react accordingly. There may be other operators or witnesses who have no or little previous experience or understanding of the public inquiry process, who may feel that they are the object of robust, unfair and intrusive scrutiny when that is not the case. A complaint that an operator or witness has been the victim of robust questioning on matters which are in fact relevant or at the heart of the issues despite the operator’s view to the contrary is not sufficient to form the basis of an allegation that a TC has been biased or appears to have been biased against them. Something more needs to be established than a robust approach”.

Whilst a robust approach may at times be necessary, TCs must avoid the impression of pre-judgment. In [T/2018/17 North Warwickshire Travel Ltd \(No 2\)](#), the Upper Tribunal found substantial errors in the conduct of the hearing (paragraphs 12-15):

“The TC started the hearing by explaining that he wished to set out what he perceived to the issues in the case for the assistance of counsel. There can be nothing wrong with that approach, which may help operators and other who attend PIs to understand and focus on the issues. However, the TC in this case went further than outlining the points on which he wished to be addressed. Numerous pages of the transcript are taken up with the TC’s comments and views on a variety of issues before he had heard evidence or submissions.”

The Upper Tribunal then cited three instances where the TC appeared to reach a conclusion before hearing any evidence or submissions. The Upper Tribunal continued (paragraph 18):

“The importance of TCs providing operators and transport managers with a fair hearing cannot be overstated. TCs must reserve their decisions on all questions that arise in PIs until after the evidence and submissions have been heard. Robust questioning is one thing. The impression of pre-judgement, even in cases that appear overwhelming, is entirely another thing and must be avoided. If it happens, the Tribunal is likely to overturn the decision.”

## 7. Practice when Bias or procedural irregularity is alleged

The procedure to be followed if an allegation of bias or procedural irregularity is made was set out in Footnote (2) to [2004/426 EA Scaffolding](#), (see below).

The requirement to follow this procedure was considered in [2008/11 Ansva Holdings](#), [T/2014/76 Transfreeze Ltd, William Morritt and Jamie Morritt](#) (paragraph 43) and [T/2014/77 Leedale Ltd](#) (paragraph 83). [2008/11 Ansva Holdings](#), also deals with other factors relevant to allegations of bias).

[2004/426 EA Scaffolding](#) was a decision reached after the Tribunal had the benefit of argument on behalf of the Secretary of State for Transport. As a result the decision is all the more authoritative. It remains good law and it is essential that the procedure set out in Footnote (2) is followed whenever an allegation of actual or perceived bias is made.

*“Footnote (2) – Allegations of Bias or Procedural Error*

*If allegations of bias or procedural conduct are made, including, for example, failure to disclose documents, these must be set out in detail in the notice of appeal. In the case of alleged bias, it is essential also that affidavits are served, as in the EAT Practice Direction 2004, so that the Tribunal may seek comments from witnesses and the Traffic Commissioner.*

*We think that less formality is needed in the case of a failure to disclose documents (see eg. [2001/39 BKG Transport](#), which is available on the Tribunal’s website and see Chapter 3 in the Digest) but if documents are found to be present in the appeal bundle and have not previously been seen by the operator, it is important that the complaint is put into an amended notice of appeal so that this may be served in particular on the Traffic Commissioner in order to enable factual comments to be made. There have been occasions in the past in which, rather than adjourn, the Tribunal has felt it necessary to make an order subject to further information, if any, to be supplied by the Traffic Area Office. It may be, for example, that the particular document was handed to the operator during the hearing and that there is no reference to this on the transcript: if so, we would expect this to be pointed out by the Traffic Area Office.”*

Timely compliance with the following points will help to ensure that the correct procedure is followed:-

- (i) *“An allegation of bias or perception of bias should be unequivocally identified and in the clearest possible terms”,* see paragraph 83 of [T/2014/77 Leedale Ltd](#)
- (ii) *“An allegation of bias is a serious matter. It is not an allegation that should be made lightly and if made it needs to be clearly proved”,* see paragraph 4 of the Addendum to [T/2014/72 Ian Russell Nicholas t/a Wigan Container Services v Secretary of State for Transport](#)
- (iii) Compliance with the EA Scaffolding procedure means that: *“an allegation of bias must (a) be set out in detail, so that everyone knows what it is that the Appellant seeks to prove and (b) should be supported by an affidavit, so that the Appellant is committed, on oath, to the detailed allegation”,* see paragraph 4 of the Addendum to [T/2014/72 Ian Russell Nicholas t/a Wigan Container Services v Secretary of State for Transport](#)

Any failure to identify an allegation of bias in sufficient detail in the Notice of Appeal is likely to result in a direction being made under Rule 5(3)(d) of the The Tribunal Procedure (Upper Tribunal) Rules 2008 requiring the Appellant to file an affidavit setting out the allegations in sufficient detail. Failure to comply with such a direction is likely to result in the allegations of bias being struck out, see the Addendum to [T/2014/72 Ian Russell Nicholas t/a Wigan Container Services v Secretary of State for Transport](#).

In [T/2015/07 Stuart McAuliffe](#) (see paragraph 36) the Appellant failed to comply with a direction that full details as to why the decision was biased should be set out in an affidavit by 24 June 2015. As a result, the Tribunal struck out the allegation.

There are at least two reasons why it is important to comply with this procedure and thus give early notice of an allegation of bias or perceived bias. The first is that it gives time for the Secretary of State for Transport to consider whether or not it is appropriate to apply to be joined as a party to the appeal under Rule 9 of and/or paragraphs 5 and 6 of Schedule 1 to The Tribunal Procedure (Upper Tribunal) Rules 2008. The second is that it provides time for the allegations to be investigated and for evidence to be given by those with knowledge of the events in issue. When considering allegations of bias or perceived bias the Tribunal is entitled, as a matter of fairness, to be put in the position of being able to consider all the relevant evidence.

The advocate appearing for the Appellants in [T/2014/76 Transfreeze Ltd, William Morritt and Jamie Morritt](#) and [T/2014/77 Leedale Ltd](#) (both heard on the same day), professed to be unaware of the decision in EA Scaffolding. It was only when he served a skeleton argument, the day before the hearing, that the Tribunal became aware that allegations of bias were being made.

Appellants and those who represent them must comply with the requirements of the Tribunal Procedure (Upper Tribunal) Rules 2008, as amended. Rule 23(2) requires an Appellant to provide a Notice of Appeal so that it is received within 1 month after the date on which notice of the decision to which the appeal relates was sent to the Appellant. Rule 23(3) provides that a Notice of Appeal must include the information listed in Rule 21(4)(a) to (e). Rule 21(4)(e) requires a Notice of Appeal to set out the grounds on which the Appellant relies. Within the 1 month period specified in Rule 23(2) an Appellant is entitled, as of right, to amend the grounds of appeal. Outside the 1 month period the Upper Tribunal is given discretion, by Rule 5(3)(c), to permit or require a party to amend a document. Immediately it becomes apparent that the grounds of appeal require amendment it is the responsibility of the Appellant or those advising him (a) to make the necessary application for permission to amend the grounds of appeal and (b) to persuade the Upper Tribunal that it is appropriate, in all the circumstances, to allow the amendment.

In [T/2014/76 Transfreeze Ltd, William Morritt and Jamie Morritt](#) and [T/2014/77 Leedale Ltd](#) the Tribunal accepted the submission, made on behalf of the Appellant, that the correct course was to determine, on the material then available to the Tribunal, whether the allegation of bias was tenable and, only if it was, to adjourn for the correct procedure to be followed. In each of those appeals remitting the matter, without considering whether the allegations were tenable, would have added further delay to appeals which were already stale. In the event the Tribunal found in each of these appeals that the allegations of bias were untenable and each appeal was dismissed.



## 8. Bias – Examples

Appellants, and those who advise them, should bear in mind that all or most of these decisions are no more than examples of the principles set out above being applied to the facts of an individual case. They should only be cited in argument if the facts are identical to those in the decision under appeal.

[2003/314 L Robbins](#) (impression that Traffic Commissioner had prejudged issue prevented Appellant from putting his case)

[2003/327 The Fox \(A1\)](#) (Adverse findings in relation to credibility were not made in such outspoken terms that they gave rise to a perception of bias)

[2003/350 Al Madina Transport](#) (expressions of provisional opinions went too far and gave the impression that TC appeared to have made up her mind in advance)

[2004/426 EA Scaffolding](#) (Real possibility of bias as a result of TC's conduct during the evidence of an important witness. Complaint made almost immediately and supported by credible evidence on Affidavit).

[2007/318 Eurotaxi](#) (Grounds of appeal alleged that the TC: *“appeared openly hostile to the operator from the outset as a consequence of his previous appeal and displayed bias against the operator”*. Tribunal listened to the recording of the PI and *“wholly rejected”* the attack on the Traffic Commissioner, who conducted the case in an *“impeccable manner”*).

[2008/60 K Oliver](#) (the nature and/or number of interventions may mean that an operator's is not given a fair opportunity to present his case as a whole, see paragraphs 67 & 68. A witness as to facts relevant to a PI or hearing cannot act in a judicial capacity in the same proceedings)

[2003/30 Helms Coaches](#) (the nature and number of the DTC's interventions contributed to the refusal of an adjournment which ought to have been granted)

[T/2018/75 P Elsagood Transport Services Ltd](#) (no “transfer” of bias between recused TC and TC making the decision – see paragraphs 19 and 20)

## 9. Miscellaneous points

Concurrent criminal proceedings - whether PI should be stayed

[2004/255 M Oliver](#) (paragraphs 79-83)

[2006/149 A & C Nowell](#) (paragraph 5, paragraph 6 sets out some practical steps to try to ensure that delay is kept to a minimum)

Service of notice – deemed service considered (see also ‘Giving Notice’ in [Chapter 4 Call-up Letters](#))

[2004/147 Amenity Horticultural Services Ltd v. Rother DC](#) (paragraph 9)

[2007/192 L Reeder](#) (paragraphs 4-13 set out the extent of the ‘deemed receipt’ provisions as well as the provisions of s.7 of the Interpretation Act 1978.

Desirability of hearing all related issues at same PI considered – TC has wide powers to join parties

[2000/22 ET Benson Precision Engineering v. Surrey CC \(County Council\)](#) (paragraph 4)

[2001/41 Tate Fuel Oils \(residents\)](#) (paragraph 4)

Desirability of inquiries relating to operator and to drivers' conduct being heard together considered

[2002/25 HJ Lea Oakes](#)

“The question of whether a driver’s conduct inquiry should be held at the same time as an operator’s inquiry was considered in [68/2001 Dukes Transport \(Craigavon\) Ltd v. Vehicle Inspectorate](#) where it was submitted to us that the two inquiries “should have been before different traffic commissioners or ..... they should have been heard together”. We have to say that if there is a possibility of conflicting evidence the latter course is to be preferred, so that all issues of fact are resolved at the same time.”

(see also [2005/56 NR Evans](#) & [2009/240 A M Kydd t/a Sandy Kydd Road Transport](#) )

Representation of Vehicle Inspectorate at PI is within TC’s discretion (para.3(6) Schedule 4 1995 GVLO Regs) and is to be encouraged

[2001/49 Norbert Dentressangle](#) (paragraph 10)

[2001/68 Dukes Transport](#) (paragraph 21)

Representation by unqualified advocate – standing

[2005/385 K Grant](#) (paragraph 4 refers to the Transport Tribunal Rules, see now Rule 11 of the UT Rules)

[2006/252 A Hayden](#) (paragraph 11, again decided under the TT Rules)

Not unfair for TC to admit statement by absent traffic examiner

[2001/53 M Williams](#)

[2003/147 WC Hockin](#) (paragraph 4)

A preliminary hearing in an appropriate case is to be encouraged

[2003/300 Andrews \(Sheffield\)](#) (paragraph 15)

Operator’s entitlement to a PI considered

[2005/57 M Winspear](#) (paragraph 4)

[2005/279 TTS Trucking](#) (paragraph 4)

Status at PI of father of accident victim considered

[2002/25 HJ Lea Oakes](#)

Rehearing ordered by Tribunal may be by same TC unless contrary stated

[2003/254 A Jones](#) (paragraphs 5 & 6) (see comments of CA in [Chapter 17 Appeals from Tribunal](#))

Tribunal hearing in England or Scotland - practice considered

[2004/364 Pallas Transport](#) (paragraphs 4 & 5. Note this case was decided by the Transport Tribunal. The UT has unified jurisdiction in England Wales and Scotland and, for HGV appeals Northern Ireland).

See [McCaffrey and Pallas](#) case in [Chapter 17 Appeals from Tribunal](#)

A Traffic Commissioner is entitled to explore the possible consequences of a course (or courses) of action but should be careful to keep an open mind.



[2011/35 Professional Transport Ltd](#)

*“6. We also find no merit in the argument relating to “indications”. From as far back as 1997, in [J37 Galloway Refrigerated Transport Ltd](#) the tribunal has encouraged Traffic Commissioners, where such a course is practicable and appropriate, to flag up the possible outcomes so as to enable an operator to make representations about the effect on their business. Without such material, it has been suggested, Traffic Commissioners are unable to make an informed judgment as to, for example, the effect and proportionality of a lengthy suspension, or a substantial curtailment. Subsequently, this guidance has been tempered by a number of decisions that recognise the inherent difficulties in such a ‘rule’, and the current position is simply that such an exploration of the effects of regulatory action may or may not be possible or desirable, depending upon the particular circumstances”.*

*“7. In the present case, the operator appears to have mistaken a perfectly proper discussion about current operational needs and the effect of a curtailment (whether time-limited or not) with an indication as to the likely outcome. The Traffic Commissioner was not, in our view, giving an indication, he was merely exploring possibilities. This is an extremely difficult thing to do – not least because, until all evidence and submissions have been heard, the Traffic Commissioner must have an open mind and, in serious cases, Traffic Commissioners should reserve their decision to allow further time for reflection”.*

It is important to bear in mind the precise words of an Act, Rule, Regulation etc and to go back to those words to ensure that a criticism or decision is justified.

[T/2013/12 Sarbjit Singh Raju & VIP Contracts Ltd](#) at paragraphs 12 & 13.

Limitation on the powers of TCs. See paragraphs 8 & 9 of:

[T/2013/38 Hobart Court Property Management Ltd v John Kent & Valerie Kent](#)

When giving time limits within which specified steps must be taken it is better to express the requirement as a date by which the steps must be taken rather than as a period of time with a potentially uncertain start date.

[T/2013/76 City Sprinter Ltd](#)

Traffic Commissioners are entitled to take into account the full picture presented by all the relevant material even though some of it may have been taken into account on an earlier occasion.

[NT/2014/02 Mrs Janet Lyons t/a Lyons Haulage \(at paragraph 10\)](#)

While TCs are given discretion as to the giving of evidence and the calling of witnesses, (see Paragraph 5(3) of Schedule 4 to the 1995 Act), given the other provisions of paragraph 5 it should not be treated as an unfettered discretion.

[T/2015/54 Richard John Cox t/a RJ Cox & Sons](#)

Where an official fails to present to a regulator an accurate and fair record of a person’s compliance record, the regulator will err in law if s/he relies on that record in making a regulatory decision, see [T/2015/74 Ian Phillips](#) (paragraph 70) and [R \(Quark Fishing Ltd\) v SoS for Foreign and Commonwealth Affairs \[2002\] EWCA Civ 1409](#)

## 10. Impounding hearings

Impounding procedure – procedure before TC considered  
[2005/449 WJ Furber](#)

Period of 21 days allowed for making application to return impounded vehicle – directory not mandatory

[2003/90 CPT Commercial](#) (paragraph 8)

[2005/471 Excel A-Rate Business Services](#) (paragraphs 6-12)

[2007/414 Barclays Asset & Sales Finance](#) (paragraphs 5-7)

The general rule is that the same person cannot be an advocate and a witness in the same proceedings

[T/2010/001 Walsh Skip Hire](#)

## 11. Adjournments

Adjournment refused before and during PI – medical evidence submitted – operator required to attend despite obvious pain – livelihood at stake – principles considered

[2003/350 Al Madina Transport](#) (at paragraph 4 the Tribunal said:

*“Was the Traffic Commissioner correct in deciding to refuse the application for an adjournment which was made on 3<sup>rd</sup> September 2003? That application came very late in the day. It was very inadequately supported by medical evidence and there was, importantly, no indication of when Mr. Hussain was likely to be fit to attend a hearing. Operators and those who advise them need to understand that a ‘sick note’ which, simply relates to unfitness to work and contains the most minimal reasons, will frequently be wholly insufficient to justify an adjournment. The fact that someone is unfit for work does not automatically mean that they are unfit to attend a Public Inquiry, either as a witness, or as a party. The better course is to submit a medical report which specifically deals with fitness to attend a Public Inquiry and, ideally, goes on to express a view as to when the person is likely to be fit. Mr Hodgson drew our attention to the decision of the Divisional Court in case of Brabazon-Denning-v-UK Central Council for Nursing Midwifery and Health Visiting transcript no. CO/490/2000, where the Court expressed the view that where livelihood and reputation are at stake only in exceptional circumstances should a hearing proceed, in the absence of the person concerned, when there is unchallenged medical evidence that the individual “was not fit to withstand the rigours of a hearing”. It is important to remember that the Court in that case had the benefit of a medical report, which expressly considered fitness to attend the hearing and expressly considered the appropriate length of an adjournment. It follows that the available evidence in that case was compelling whereas in the present case it was not. In our view the refusal of an adjournment prior to the hearing was justified, particularly as Mr. Hussain was given the opportunity to make a further application at the hearing itself”.*

(see also: [Muck It](#) case in [Chapter 17 Appeals from Tribunal](#)  
[2005/362 M Couzens](#)

Adjournment refused despite VOSA's failure to release seized documents

[2008/413 Al-Le Logistics](#)

TC should order adjournment on own initiative if obvious operator taken by surprise

[2000/5 M Williams](#) (paragraph 11)

TC not informed of application to adjourn so unable properly to rule upon it

[2000/2 Grifpack](#)

TC not inform operator of refusal to adjourn - operator failed to attend

[2005/110 G DEM](#)

Steps taken by the Tribunal before hearing in absence

[2009/524 Ocean Transport](#) (see paragraph 3)

Once called to a Public Inquiry it is for an operator who seeks an adjournment to satisfy the Traffic Commissioner that it is appropriate and in the interests of justice to set another date. Deciding whether or not to adjourn involves an exercise of discretion. In exercising that discretion the TC is entitled to take into account all relevant factors, for example, (i) the reason, (ii) supporting evidence or the lack of it, (iii) any delay between learning of the difficulty and applying to adjourn, (iv) the length of adjournment requested and (v) the impact on road safety, fair competition and/or compliance with the regulatory regime of adjourning for the period requested. These are no more than examples, other factors may be relevant, if so they should be considered

[T/2013/66 VST Building & Maintenance Ltd.](#)

## 12. Evidence

A written response is desirable when replying to letters/requests from, for example, VOSA, the Central Licensing Unit at Leeds or from the Traffic Commissioner or the office of the Traffic Commissioner because it will provide fuller and more reliable evidence

[T/2010/005 Gary James Transport](#)

Assessment of credibility. The approach of the Deputy Traffic Commissioner, (set out at paragraph 2(xiv) of the decision), was detailed and meticulous. Possible innocent explanations were considered and reasons given for rejecting them. Only then was the conclusion reached that the witness was not credible. Whenever appropriate this approach to the assessment of credibility should be followed.

[T/2011/29 David Pritchard and Vehicle and Operator Services Agency](#)

Oral evidence is material evidence which once accessed, can be accepted and does not require corroboration. Substantiation is useful but not necessary.

[UA-2021-000523-NT NI Truck Rentals Ltd](#) (paragraph 34)

Drawing inferences. The Tribunal found that the Deputy Traffic Commissioner was entitled to draw inferences from primary findings of fact and held that the appellant "should have been in no doubt what fronting meant and how seriously it was viewed and that as transport manager she should have been on high alert with regard to signs of fronting." (paragraph 41). "The primary findings of fact were well made out and the inferences drawn from them are not open to criticism" (paragraph 42).

[UA-2021-000465-T Liliana Manole](#)

Inference from Appellant choosing not to give evidence – “entitled to draw inferences from [Appellant’s] silence, and for such inferences to be added to the evidence to be assessed in determining this matter.” (paragraph 30).

[JA-2022-000001-NT Derrymorgan Transport Ltd](#)

Status of Guide to Maintaining Roadworthiness (GTMRW)

The Tribunal rejected submissions that that the TC had elevated the GTMRW to the status of legislation. The Tribunal recognised it as “an important tool which may be utilised by an Operator to ensure or inform as to compliance with required safety standards”. The TC treated its content as “informing as to what might normally be expected of an Operator.... but that was entirely permissible. Ultimately the TC resolved matters against the appellant not because guidance in the GMR had not been complied with but because it did not “ensure it has effective systems in place to ensure roadworthiness checks to the required standard.” (paragraph 37).

[JA-2022-001227-T Lineage UK Transport Ltd](#)

See also [Midland Container Logistics Limited and James Donlon D K Barnsley & Sons Ltd](#) T/2018/20 and T/2018/28 (paragraphs 51-52).

The ultimate guardian of the fairness of a Public Inquiry is the TC. If it becomes apparent that an applicant, operator or witness is having difficulty understanding the proceedings or making themselves understood the TC must consider whether the assistance of an interpreter is necessary and, if necessary adjourn the proceedings for an interpreter to be appointed.

[T/2013/62 Sukhvir Kaur t/a Major Cars \(paragraphs 7 & 8\)](#)

A TC is entitled to have regard to the punishment imposed in respect of any offences taken into account in the context of operator’s licencing. The suggestion that the TC should have regard to the severity of the penalty imposed by a Criminal Court and reduce the severity of the regulatory action was rejected, see paragraph 42 of:

[T/2015/21 J O’Doherty](#)

Co-operation with the TC and other authorities is to be expected because it is a basic requirement of the regulatory regime. As a result when advanced as a favourable factor it can only carry limited weight. By contrast non-compliance with the TC, the OTC, DVSA, the Police or any other relevant authority is an aggravating factor, to which, in appropriate circumstances the TC is entitled to give great weight, see paragraph 45 of:

[T/2015/21 J O’Doherty](#)

### **13. Nature of a Re-hearing**

The nature of the re-hearing when an appeal is allowed and the matter is remitted to the TC was considered at paragraph 40 of [T/2015/07 Stuart McAuliffe](#). In that situation Appellants should expect that: (i) the papers before the TC at the first PI or hearing will be used at the second PI or hearing, (ii) normally a transcript of the first PI or hearing will be available at the second PI or hearing, and (iii) it will be for the TC conducting the second PI or hearing to determine how to proceed, in the light of the reasons given for

ordering that the matter be remitted. That includes the question of whether or not it is appropriate to call witnesses.

## Chapter 11 Discretionary Issues

### (Maintenance, Drivers' Hours & Rules, Tachographs etc.)

See also [Chapter 12 Revocation, Suspension and Curtailment](#), where reference is made to the legislation.

#### 1. Burden of proof

Application of Muck It case (see [Chapter 17 Appeals from Tribunal](#))  
[2006/56 Paul Oven Transport](#)

#### 2. Drivers' hours and Tachographs

Undertaking to make arrangements to observe rules on drivers' hours and tachographs and to keep proper records requires constant supervision and monitoring so as to ensure that systems work

[2000/45 M Jolly Transport](#) at paragraph 6 the Tribunal said:

*"We expressly endorse the Traffic Commissioner's reference to 1999 L56 Alison Jones t/a/ Jones Motors where this Tribunal stated:-*

*"In our view this statutory undertaking requires more than that the operator should set up adequate systems and then leave them to run themselves: what is required is constant supervision and monitoring so as to ensure that the systems work."*

*It is appropriate to add that both lay members of the Tribunal brought their own knowledge of the industry to bear and concluded not only that no proper arrangements had been made but that this was indeed a bad case".*

[2001/7 Alcaline UK](#) (paragraphs 8 & 9)

[2001/49 Norbert Dentressangle](#)

"We are satisfied that in the light of the enforcement history of this operation, the Traffic Commissioner rightly considered this to be a bad case. The percentage rate of infringements and the nature of those infringements even if one excludes those relating to rest breaks are serious, particularly in the context of the Appellant having been before the same Traffic Commissioner only five months before. The Tribunal has previously indicated in [Alcaline UK Limited \(Appeal 7/2001\)](#) that in most cases there is likely to be some degree of recklessness on the part of a Company that would make it responsible for the failure if its drivers. However, the Tribunal also noted that in the case of persistent breach it is difficult for an operator to contend that its systems are either "appropriate" or "reasonable". In other words, systems should be judged by their results. We also note that in the Nuttall case, Lord Steyn was clear in his judgment that when considering whether there has been a degree of recklessness in the conduct of an Appellant, the circumstances of the particular case must be taken into account. In this case we consider that the very recent and serious enforcement action taken in respect of the licence in June 2000 was highly relevant."

[2001/68 Dukes Transport](#) – see quotation in [Chapter 12 – Directors' Duties](#)  
[2008/413 Al-Le Logistics](#) (undertaking not absolute)

Falsification of drivers' hours considered  
[2008/342 AJ Brown](#) (Ghost drivers)

Proportionality of weekly rest offences considered  
[2008/780 South Lincs Plant Hire](#)

Requirement to record other work – Article 6(5) of Regulation 561/2006  
[2009/225 Priority Freight](#) (paras 4-6)

It is the duty of the operator to make proper arrangements  
[T/2010/063 CP Hart & A Hart t/a Zulu's Minibus](#)

“The duty upon an operator who undertakes to make proper arrangements so that the rules on driver’s hours and tachographs are observed and proper records kept, is clear. It is not for VOSA or anyone else to take responsibility for advising Mr Hart that he must acquire a proper understanding of the driver’s hours rules, and that he should not make false records. In seeking to shift blame from Mr Hart, where it rightly belongs, onto the shoulders of VOSA or “the system” demonstrates that Mr Hart still has a lot to learn about his own responsibilities before he can be trusted to hold an operator’s licence. We consider that Mr Bowling’s arguments on this point did more harm than good, and that Mr and Mrs Hart’s representatives at the public inquiry were well advised to avoid making such misguided and misconceived submissions.”

Failure to produce tachograph charts etc. The potential significance was considered in [NT/2014/02 Mrs Janet Lyons t/a Lyons Haulage](#). At paragraph 28 the Tribunal said:

*“28. At first sight and taken out of context a failure to produce tachograph records may not appear to be particularly serious. However it should always provoke the question: ‘why were the records not produced?’ The use of tachographs makes an important contribution to road safety and the safety of the public. In particular it provides a record of a vehicle’s speed and a check on whether the driver has taken proper rest breaks. Where failure to produce tachograph records results in a conviction it suggests that there is no innocent explanation for the no-production of the records. That in turn prompts the question: ‘what is the operator trying to hide?’”*

The importance of compliance with these regulations was stressed by the Tribunal in [T/2014/25 & 26 H. Sivyver \(Transport\) Operator and Simon Sivyver \(Transport Manager\)](#) at paragraph 7 the Tribunal said:

*“The actual infringements illustrate the road safety implications of missing data. The purposes of the drivers’ hours regulations and tachograph requirements include road safety, driver protection and fair competition. This operator, relying as it does in these proceedings upon its long history, good reputation and prestigious contracts should have been an example to others. Instead, for too long, there was a significant and serious failure to manage an aspect of its transport operation that goes to the heart of road and public safety, and fair competition within a highly competitive industry where prestigious contracts are hard fought over. In the circumstances, we do not think that the Traffic Commissioner had any realistic alternative but to take significant regulatory action”.*



Factors to be considered when assessing the gravity of breaches of the rules on Driver's Hours and Tachographs were considered in [T/2014/72 Ian Russell Nicholas t/a Wigan Container Services v Secretary of State for Transport](#). At paragraph 4 the Tribunal said:-

*“The first part of paragraph 2(ixiv) above [set out below], contains a summary and quotations from the opening speech of Prosecuting Counsel in the case against LN. It sets out, in general terms, the reasons for and the importance of the rules on drivers' hours and tachographs. We agree with what Prosecuting Counsel said and we consider that Traffic Commissioners are entitled to take those factors into account: (a) when assessing the gravity of any proved breach (i) of the rules on drivers' hours and tachographs and/or (ii) of the undertaking attached to every licence that those rules will be observed and (b) when considering whether and, if so, what effect such breaches of those rules have on the good repute of the operator in question”.*

Paragraph 2 (ixiv) of [T/2014/72 Ian Russell Nicholas t/a Wigan Container Services v Secretary of State for Transport](#) is as follows:-

*“In outlining the prosecution case against LN counsel for the prosecution said that the prime objects of the rules on drivers' hours are: “to promote road safety; to control social working conditions of drivers and to ensure fair competition between operators”. Counsel went on to make the point that the need to promote road safety took account of the very substantial harm that HGV's are capable of causing if poorly driven, because: “a tired driver is a less attentive and so less safe driver”. He said that the importance of controlling social working conditions was to remove the pressure on drivers to drive for long and anti-social hours in order to maximise profit. Finally he said in relation to fair competition: “If one operator complies with the rules but others flout them then those prepared to drive excessively will gain a significant competitive advantage over the compliant. This will increase pressure on compliant employers and drivers themselves to break the rules or go out of business in a very competitive high cost and low margin industry”. He also made the point that the proper installation and proper use of tachographs is essential to the enforcement of the rules on drivers' hours. He said that the prosecution case was that the primary object of the falsification to which LN was a party was to produce false documentary records for later production, if necessary, which concealed illegal and excessive driving by RN and/or LN, with the underlying motive of making a profit. Counsel then went on to describe how there were many instances when the timing on entry and exits logs at the docks and/or CCTV evidence showing the identity of the driver was not consistent with the information recorded on the relevant tachograph chart”.*

### **3. Maintenance**

Proportionality of maintenance defects considered  
[2000/57 Yorkshire Rider](#) (see under heading First Bristol)  
[2004/36 G Jenkins](#) (paragraph 7)

Serious maintenance defects considered

[2003/142 Thames Bus](#)  
[2003/194 Smith's Distribution](#)

Maintenance may not be wholly delegated to a contractor – operator must retain control

[2002/25 HJ Lea Oakes](#)

Undertaking for 6 months' audit properly imposed

[2008/470 Heart of Wales Bus and Coach Hire](#)

Falsification of maintenance records – bad case

[2005/87 P Duckmanton](#)

#### 4. Failure to respond and Failure to Produce Records

Failure to reply to letters may lead to conclusion that there has been a material change in circumstances under s.26(1)(h) of 1995 Act

[2001/17 R Hayes](#) (paragraph 4)  
(see also [2003/351 D Silman](#) (paragraph 4)  
[2004/95 Clearout](#) (paragraphs 3 & 4)

[2005/472 J McNamara](#)) at paragraphs 6-10 the Tribunal said this:

6. "This appeal provides an opportunity to restate the position in relation to (a) correspondence addresses and (b) replying to letters from Traffic Offices. The application form completed when an operator applies for a licence requires the operator to identify a 'correspondence address'. This can be the operating centre but equally it can be a home address or any other address at which the operator can, reliably, receive correspondence. The most important feature of this address is that it must be a place at which the operator can, regularly, safely and reliably, collect correspondence.
7. Regulation 25 of the Goods Vehicles (Licensing of Operators) Regulations 1995 provides that: *"If during the currency of a licence the address for correspondence as notified in the licence-holder's application or as subsequently notified under this regulation ceases to be an effective address for correspondence the licence-holder shall within 28 days from the date of such event notify the traffic commissioner by whom the licence was granted of an effective address for correspondence"*. Two points should be noted in relation to the terms of this Regulation. First, it refers to an address for correspondence 'ceasing to be an effective address'. The underlining is ours because we wish to stress that the Regulation does not relate solely to a change of address. Instead it relates both to an address which has been changed but also to one which has remained unchanged but which has, for some other reason, ceased to be an address which is effective for the purpose of enabling the operator to receive correspondence. Second, it uses the word 'shall', which places the onus firmly on the operator to notify the Traffic Commissioner of a new 'effective' address if, for any reason, the old address has become ineffective.
8. The Tribunal has stressed on several occasions in the past that Traffic Commissioners are entitled to assume, unless and until the contrary becomes apparent, that letters sent to an operator's correspondence address have been received, even though there has been no reply. In our view this conclusion is amply justified by the terms of Regulation 25 and, in any event, any other conclusion would cause serious difficulties to Traffic Offices as well as giving free rein to unscrupulous operators to abuse a system which is based on trust.

9. One aspect of the trust which should exist between the Traffic Commissioner and an operator is that the Traffic Office is entitled to expect to receive replies to correspondence, either within the timescale set down in the letter from the Traffic Office, or with the promptness which the contents of the letter under reply deserves. Sometimes an operator may have good reasons for being unable to reply, in full, at once. In that case he should reply promptly and explain why he cannot reply in full and how long he will need to do so. The alternative of remaining silent will, almost inevitably, lead the Traffic Commissioner to draw adverse conclusions which it may be impossible to overturn on appeal.
10. In the appeal of [A.J. Curtis t/a Silver Wing Travel appeal no. 12 of 2001](#) the Tribunal said this:-

*“This case demonstrates, once again, how important it is for operators to reply to correspondence from Traffic Commissioners. If they fail to do so and if they fail to take advantage of the opportunity of requiring a Public Inquiry, with the result that their operator’s licence is revoked, it is highly unlikely that an appeal to the Tribunal will succeed. An operator in this situation who wishes to remain in business would be well advised to make an application for a fresh licence. That course has the great advantage of enabling the Traffic Commissioner to make an up to date assessment of whether the operator meets the statutory requirements. It also enables the operator to put the full picture before the Traffic Commissioner free from the statutory constraint which prohibits the Tribunal from taking into account ‘any circumstances which did not exist at the time of the determination the subject of the appeal.’ If the Appellant wishes to remain in business as a Public Service Vehicle operator he must accordingly apply for a new licence.”*

If for the expression ‘a Public Service Vehicle operator’ there was substituted ‘a goods vehicle operator’ those words would be equally applicable to the situation in the present appeal. The Appellant was aware that his correspondence address was not ‘an effective address’ yet he took no steps to notify the Traffic Commissioner of an effective correspondence address. As a result important letters from the Traffic Office went unanswered. The Appellant was subject to personal pressures, which, although entirely understandable, did not allow him to run this business in the way in which it should have been run. In our judgment the situation in this case left the Traffic Commissioner with no option other than to revoke the licence. Far from being shown to be ‘plainly wrong’ the decision of the Traffic Commissioner was plainly right. It follows that the appeal must be dismissed’.

[T/2010/048 Jim Bertie Ltd](#)

“The duty upon an operator to ensure that the Traffic Area Office is able to communicate effectively is particularly important in a case such as this where it was fully known and appreciated that a public inquiry had to be re-scheduled for hearing. Mr Edwards only had to telephone the Office of the Traffic Commissioner in order to discover the new date. As it was, properly posted letters were not returned, no alternative postal address was provided, efforts by the Office of the Traffic Commissioner to make contact by phone failed, and the operator and Transport Manager made no effort whatsoever to keep in touch with the office (once an adjournment had been granted at the operator’s request) even though they were fully aware of the ongoing proceedings, and the fact that the Deputy Traffic Commissioner had already adjourned the hearing 3 times in order to accommodate a range of difficulties.”

[T/2010/056 Instant Freight](#)

“We explained to the Appellant that in addition to the absence of adequate financial evidence we were concerned about the failure to respond to correspondence. The Tribunal has stated on many occasions that operator’s licensing depends on trust. One important aspect of that trust is that the Traffic

Commissioner must be able to rely on an operator having in place: (a) an address at which he can reliably receive important correspondence, (whether it be from VOSA, the Office of the Traffic Commissioner, the office in Leeds or any other significant source), and, (b) a system which ensures that correspondence is fully answered, within any time limit which has been set, or else within a reasonable time and that if documents are requested that they are sent.”

[T/2015/40 Tacsí Gwynedd Ltd](#)

From time to time operators are asked, by TCs, the DVSA, the Police or others, to produce records or other documents, which they are required to retain. Some fail to do so and give a variety of explanations, for example that the material in question has been stolen or destroyed in a fire. Often the circumstances in which the material has been lost give rise to the suspicion that the explanation is fabricated but the evidence is such that the TC in question feels unable to reach such a serious conclusion. The dilemma faced by TCs in this situation is illustrated by paragraphs 76 and 77 of the decision in [T/2015/40 Tacsí Gwynedd Ltd](#) where the Tribunal said this:

*“76. While the Deputy Traffic Commissioner did not conclude the theft of relevant documentation and records was fabricated, he expressed suspicions. The Commissioner also noted the surprisingly regularity of similar thefts on the eve of a production deadline. Regrettably, that reflects our experience. This creates a dilemma. The seriousness of a finding of fabrication, in that it might imply a very serious criminal offence, may lead to reluctance to make the finding without overwhelming evidence.*

*77. Even without a finding of fabrication, however, a serious regulatory breach has probably occurred. To keep vital evidence of regulatory compliance in an insecure location is unacceptable. The industry needs to hear that message loud and clear. We therefore find that this operator failed to make adequate arrangements for safely storing records of its regulatory compliance. That is a serious regulatory breach”.*

## 5. Material change in circumstances

A change in the entity holding an operator’s licence is a material change in circumstances because s. 48(1) of the 1995 Act, s. 57(1) of the 1981 Act and s. 48(1) of the 2010 Act each provide that an operator’s licence is: *“neither transferable nor assignable”*.

[T/2015/09 Richard & Sylvia Jones t/a Acorn Skips](#) (para 10).

Change of operating centre is a material change

[2005/411 Frank Maas \(UK\)](#)

Use of drivers without community licence (from Turkey) in UK is a material change

[2000/46 Arondi](#)

## 6. Miscellaneous points

Double jeopardy does not arise if operator dealt with by TC while possibility of criminal charge continues

[2000/48 JC Evans](#) (paragraph 5)

[2004/255 M Oliver](#) (paragraphs 80-83)

Culture of non-compliance with rules is serious

[2002/167 A Cooper](#)

[2004/255 M Oliver](#)

Duty to co-operate with VOSA and TC's

[T/2010/064 JWF \(UK\) Ltd](#)

“Having regard to all the circumstances, the tribunal is of the view that, for the reasons she gave, the Traffic Commissioner’s decision to revoke this licence was plainly right. This operator had ample opportunity to engage in a professional and co-operative way with VOSA and with the Traffic Commissioner. If operators fail to do so, they cannot complain when such repeated and obvious avoidance of engagement results in the loss of a licence. In this case, serious questions relating to maintenance and road safety remained unanswered, quite apart from the other matters that seriously undermined the ability of VOSA, and the Traffic Commissioner, to investigate and regulate the activities of this operator, effectively.”

All operators have a positive duty to co-operate with VOSA and the Traffic Commissioner. This operator has manifestly failed to do so.

TC wrong to rely on stale evidence and to ignore recent improvements

[2006/149 A & C Nowell](#)

## Chapter 12 Revocation, Suspension and Curtailment.

### 1. Heavy Goods Vehicles

Section 26(1) of the 1995 Act gives the Traffic Commissioner, who issued the operator's licence, discretion to direct that it be "revoked, suspended or curtailed", if any of the grounds set out in s. 26 are made out.

Section 27 of the 1995 Act provides that the Traffic Commissioner who issued a standard licence "shall direct that it be revoked if at any time it appears to him that the licence-holder no longer satisfies the requirements of section 13A(2), (see [Chapter 5 Requirements for the Grant of a Licence](#)), or that the transport manager designated in accordance with Article 4 of the 2009 Regulation no longer satisfies the requirements of section 13A(3)".

### 2. Public Service Vehicles

Section 17(1) of the 1981 Act provides that the Traffic Commissioner by whom a standard licence was issued must revoke it if it appears, at any time, that the holder of the licence no longer satisfies the requirements of section 14ZA(2), (see [Chapter 5 Requirements for the Grant of a Licence](#)), or that the transport manager designated in accordance with Article 4 of the 2009 Regulation no longer satisfies the requirements of section 14ZA(3)".

Section 17(2) of the 1981 Act provides that, without prejudice to subsection (1) the TC by whom a PSV operator's licence was granted may revoke or suspend the licence, or vary any condition attached under s.16(1), (specifying the maximum number of vehicles authorised), or attach any such condition. The grounds on which such action can be taken are set out in s. 17(3) of the 1981 Act.

### 3. Need for Regulatory Action

It is generally appropriate to view the conduct of an individual operator in the context of the need for fair and consistent regulation of the industry as a whole.

In [2007/459 KDL European](#) the Tribunal said this at paragraph 14:

*"Adopting Counsel's words, we are satisfied of the need "to make an example of the operator so as to send a warning to the industry as a whole". This is consistent with the approach by the five-judge Court of Session in the [Thomas Muir](#) case (see paragraph 2(xiii) above), ([Thomas Muir \(Haulage\) Limited v. The Secretary of State for the Environment, Transport and the Regions](#)), where deterrence is expressly mentioned ("in particular for the purpose of deterring the operator or other persons from failing to carry out their responsibilities under the legislation"). This is not by way of punishment per se but, as Lord Cullen said, is "in order to assist in the achievement of the purpose of the legislation".*

In [T/2013/47 Dundee Plant Company Ltd](#) the Tribunal referred to the "real dilemma" which faced the Traffic Commissioner when considering the interests of the operator on the one hand and the public interest in fair and consistent regulation on the other. The Tribunal concluded that the Traffic Commissioner was right to take into account the following passage quoted by the Traffic Commissioner and taken from an unreported decision on an application for a stay:



*“Other operators with knowledge of this case may be tempted to say to themselves – ‘this operator appears to be getting away with it so why should we bother to incur expenditure of time, trouble and money to run a compliant operation?’ In my view, it only needs one or two other operators to adopt this approach in response to this case to lead to greater and greater numbers doing so in future. If that happens there is a real risk that the operators’ licensing system, which has made a significant contribution to road safety, will be fatally undermined.”*

One of the questions which arose in [T/2014/72 Ian Russell Nicholas t/a Wigan Container Services v Secretary of State for Transport](#) was whether the TC was entitled to have regard to the message sent to other operators by her decision. The Tribunal, (at paragraph 5), concluded that she was, adding:

*“The primary purpose of the regulatory regime is to ensure that potentially dangerous vehicles are operated safely. That purpose is not confined to keeping vehicles in a fit and serviceable condition. Instead it extends to ensuring, amongst other things, that drivers are properly qualified, that they are not required, or permitted, to work excessive hours and that operators comply with all the obligations of the regulatory regime and compete fairly with each other”.*

Having quoted the passage set out above from the decision in Dundee Plant the Tribunal went on to say:-

*“We would simply add that there is a real risk that if non-compliant operators appear to be allowed to thrive it will be compliant operators, who most deserve to remain in the industry, who are likely to be amongst the first to be driven out of it. We are satisfied that that is not in the public interest and that the public interest requires that Traffic Commissioners are seen to be firm and even-handed in requiring compliance with the regulatory regime and that they are seen to send out a consistent message that compliance is a requirement of continuing to hold a licence; not something to be observed as and when the operator finds it convenient to do so”.*

In [T/2014/24 KA & Z Leonida t/a ETS](#) the Tribunal considered the factors to be taken into account when deciding whether the length and timing of a suspension was disproportionate. At paragraph 20 the Tribunal said this:

*“Are they limited to the impact on the business of the Appellant and the company or was the Deputy Traffic Commissioner correct to take the impact on the industry as a whole into account? We are quite satisfied that he was duty bound to take the impact on the industry as a whole into account. While he did not refer to the passage in Dundee Plant, quoted at paragraph 5 above, he clearly had those considerations in mind. In our view, given the matters to which we have referred in paragraph 4 above, this was a case where the Deputy Traffic Commissioner had to achieve a balance between the impact on this business, on the one hand, and the impact on respect for and compliance with the regulatory regime on the other. We have already indicated that in our view the latter was the more important of the two factors”.*



## 4. Revocation

### (i) Period of Grace

TCs have been given discretion, by s. 17(1A) of the 1981 Act, s. 27(3A) of the 1995 Act and s. 24(3A) of the 2010 Act to avoid mandatory revocation by serving on the operator a notice setting out a time limit within which the situation giving rise to what would otherwise be mandatory revocation must be rectified. These provisions give rise to what is generally referred to as 'a period of grace'. They were introduced as a result of Article 13.1 of the 2009 Regulations. If the matters giving rise to mandatory revocation are rectified during the period of grace the TC is not permitted to revoke the licence. The initial time limit for rectification in relation to the recruitment of a replacement transport manager, the lack of an effective and stable establishment or a failure to satisfy the requirement of financial standing is a period of up to 6 months. This may be extended, in the case of the death or physical incapacity of a transport manager, by up to a further 3 months.

The power to set a period of grace is triggered by the fact that an operator no longer satisfies the requirement to have a transport manager, who is of good repute and professionally competent, and/or no longer has a stable and effective establishment and/or no longer has appropriate financial standing.

In [UA-2021-000018-T, Egertons Recovery Group Limited](#), the Upper Tribunal considered the process and found that the s27(2) notice and the letter granting a period of grace, when taken together, reflect the process set out in Article 13.1 of the 2009 Regulation and constitute compliance with s27(3A). "It is clear that a finding that an operator no longer meets one of the requirements is necessary before a PofG can be considered..." (paragraph 36). The Tribunal also rejected the submission that "the granting of a PofG amounts to a decision "not to revoke" the licence which entitles an operator to a further s27(2) notice rather than automatic revocation. At the stage of granting the PofG, the finding of loss of professional competence will have already been made and unless a PofG is granted and complied with, the licence will be revoked" (paragraph 44). The Appellant's application to the Court of Appeal for permission to appeal against the UT decision was refused.

In [T/2015/40 Tacsí Gwynedd Ltd](#) the Tribunal concluded, see paragraphs 64-73, that the expression: "*Where a competent authority is no longer satisfied*" that an Article 3 requirement is met must refer to a finding by the TC to that effect rather than to the date on which the Article 3 requirement was no longer satisfied. In other words, any period of grace that is granted commences from the date of the determination that the requirement is not satisfied.

When considering whether or not to grant a period of grace TCs are entitled to look for some tangible evidence, beyond mere hope or aspiration, that granting a period of grace will be worthwhile, and that there are reasonable prospects for a good outcome. [T/2014/08 Duncan \(operator\) & Mary Mckee \(transport manager\)](#) (paragraph 7).

(ii) Lack of Financial Standing - Mandatory

Revocation for lack of financial standing is mandatory – proportionality does not arise see comments of Court of Appeal in [Anglorom](#) case in [Chapter 22 Appeals from Tribunal](#) and see [2005/7 2 Travel Group](#) and [Chapter 8 Financial Standing](#)

(iii) Cumulative effect of deficiencies

*“Revocation is not disproportionate where, in the absence of any objective justification and excuse, there have been long term, sustained, repetitive deficiencies. We therefore dismiss the appeal”.*

[T/2009/410 Warstone Motors Ltd t/a The Green Bus Service](#)

Followed in [T/2014/82 Cowan Plant Ltd & Fiona Heather Macleod](#) (paragraph 38)

## 5. Curtailment

Circumstances where curtailment appropriate considered

[2003/85 Nostalgia Bus](#)

[2003/142 Thames Bus](#) (paragraph 3)

[2006/161 Kent Vale Transport](#) (paragraphs 3-7)

The passage from [T/2013/47 Dundee Plant Company Ltd](#) quoted below under the heading Suspension is equally applicable to cases of curtailment.

In [UA-2022-001227-T Lineage UK Transport Ltd](#), the Tribunal rejected an argument that the TC’s decision to curtail the operator’s licence constituted a punishment and in so doing breached the binding statutory Regulator’s Code (made pursuant to section 22 of the Legislative and Regulatory Reform Act 2006). See paragraphs 39-42.

## 6. Suspension

Approach to need for investigation into likely consequences if suspension ordered considered – not mandatory but dependent on circumstances

[2002/167 A Cooper](#)

“Mr Whiteford’s second submission was founded on the appeal *1997 J37 Galloway Refrigerated Transport Ltd* in which the Tribunal stated:-

“It is apparent that the Traffic Commissioner took, and was entitled to take, a very serious view of the Appellants’ conduct. Nevertheless, suspension of the licence as ordered would have had the effect that the whole fleet of 25 vehicles and 16 trailers was put off the road for 4 weeks, which we regard as action of the sort that few firms could be expected to survive. If the Traffic Commissioner intended so to suspend we think that in the particular circumstances it was incumbent upon him to have given warning of this or at least generally to have stated the options that he was considering so as to have enabled the Appellants to make representations about the effect of suspension on their business. Without such material we consider that the Traffic Commissioner was unable properly to decide on the appropriate length of suspension and whether it should have been total.”

“This appeal was the subject of comment in appeal *1999 L47 Hinchcliffe Bros Skip Hire 1985 Ltd*:-

“In the course of argument Mr Ward expanded these assertions to include an argument, based on the decision of the Tribunal in *1997 J37 Galloway Refrigerated Transport Ltd*, to the effect that the Deputy Traffic Commissioner should have investigated the likely financial effect of a suspension before imposing it. We do not regard the *Galloway* decision as having laid down a principle of universal application; much depends upon the particular circumstances of each case.”

“The *Galloway* case has also been referred to in two recent cases ([81/2001 K Transport Services \(Midlands\) Ltd](#); and [144/2002 Abbeycheer Ltd](#)) in which it is suggested that it is “incumbent” upon a traffic commissioner to make the appropriate enquiries as to the likely effect of his proposed action on the Appellant’s business. The *Galloway* case is stated to be the basis for this assertion but we must emphasise that as is clear from its wording, and as is stated in the *Hinchcliffe* case, the *Galloway* case turned on its particular facts. It did not decide a principle of general application.”

(see also [2003/287 Malco Freight](#)  
[2003/327 The Fox \(A1\)](#) (paragraph 5)  
[2005/56 NR Evans](#) (specialist vehicles)

[2007/133 Recycled Packaging \(Scotland\)](#) (non specialist vehicles), where the Tribunal said, at paragraph 4:-

*“We agree that the Tribunal has stated in some cases that it is desirable that a warning of the likely order should be given so as to enable evidence of consequences to be obtained. However, a distinction is to be made between operators of non-specialist vehicles, where sub-contractors are likely to be readily available, and operators of specialist vehicles, where (substantial) suspension may be tantamount to revocation (see the cases reviewed in [2002/167 A Cooper t/a C-Fare \(Oban\)](#) and see also [2005/56 NR Evans & Son Ltd](#) and [2006/171 Black & White Motorways Ltd](#)). We must emphasise, as we said in the [Cooper case](#), that each case turns on its own facts. In the present case it was accepted that the Appellant Company operated non-specialist vehicles”.*

One factor which operators must consider is the likelihood of some regulatory action being taken. In [T/2014/24 KA & Z Leonida t/a ETS](#) the Tribunal said, at paragraph 13:

*“Given the fact that the partnership was ‘staring revocation in the face’ it ought to have been clear to the Leonida brothers and it must have been clear to Mr Brown that some form of regulatory action was inevitable. The sensible course, in that situation, would have been for the operator and its adviser to work out, in advance, the least damaging form of regulatory action and then to set out, in much greater detail than was done in this case, the consequences of each form of regulatory action and why the business might be able to survive in one case but could not in others. Unfortunately that does not appear to have been done in the present case. Instead it appears to us that a decision was taken to gamble on avoiding any form of regulatory action. In a case like this*

*operators who gamble in that way and lose will find it difficult to complain if Traffic Commissioners then take regulatory action that puts the business in difficulty”.*

But TC must consider such evidence as to consequences as is available and give reasons

[2002/197 Mason Haulage](#)

The approach to suspension was fully considered, together with the relevant authorities and a 12 week suspension was upheld in:

[T/2013/47 Dundee Plant Company Ltd](#)

At paragraph 12 the Tribunal said this in response to the submission that a 12 week suspension could not be justified because it was “tantamount to revocation”:

*“There are two flaws with this argument. First, it must have been perfectly plain from the outset that this operator was staring revocation in the face. Consequently, if it was proposed to try and persuade the traffic commissioner not only to draw back from revocation, but to limit the length of any suspension, then it was surely apparent that the most compelling financial evidence would be needed to permit any ‘tantamount to revocation’ argument to have even the remotest chance of success. The Appellant was permitted to*

*make representations about the alleged effect of suspension on its business. However, on the financial evidence presented to the traffic commissioner it was, in our view, far from established that the costs of hiring in a small fleet for 12 weeks would, in fact, be ruinous. Words of doom and gloom are easy to utter, and traffic commissioners hear them all the time. It follows that, in a case like this, assuming that the traffic commissioner might have been encouraged to impose a shorter suspension had she been determined to provide a lifeline, the actuarial evidence needed to be far more specific, comprehensive and compelling that it was”.*

At paragraph 15 the Tribunal added this:

*“For our part, therefore, we see no difficulty in the traffic commissioner concluding, in principle, that the right thing to do is to draw back from the ultimate sanction and, instead, impose a 12 week suspension. In any event, we consider that it would be a very retrograde step to discourage traffic commissioners from taking tough regulatory action (but falling short of revocation) if, after conducting a balancing exercise, it appears right to do so where a very clear marker is needed. We hold this view even if there is a possibility that the consequence will be to put the business in peril. In an appropriate case (which this is) a traffic commissioner is entitled to say: “I hope you survive but if not – so be it. On these particular facts, the public interest in maintaining the integrity of the system demands nothing less than a lengthy suspension”.*

Similar considerations apply in the case of curtailment.

## **7. Interim orders**

No power to make interim orders without hearing operator

[2006/487 D & H Travel](#)

## **8. Power to Review**

A TC who has suspended a PSV operator's licence has power under s. 17(5B) of the 1981 Act "*at any time*" to (a) cancel the suspension or (b) with the consent of the licence-holder, vary the suspension.

A TC who has suspended or curtailed an HGV operator's licence has identical powers under s. 26(8) of the 1995 Act.

DOENI have similar powers following the suspension or curtailment of an HGV operator's licence issued in NI, see s. 23(7) of the 2010 Act.

## Chapter 13 Disqualification

### 1. Heavy Goods Vehicles

Section 28 of the 1995 Act gives Traffic Commissioners discretion to disqualify “any person who was the holder of a licence” either indefinitely or for such period as he thinks fit. The power extends to disqualifying the directors of a company where the company was the holder of the licence and to any partner where the holder of the licence was a partnership. The power to disqualify can only be exercised after a direction that the licence is to be revoked.

Paragraph 16(1) of Schedule 3 to the 1995 Act provides that if a Traffic Commissioner determines that a Transport Manager is no longer of good repute or professionally competent he must order that person to be disqualified.

### 2. Public Service Vehicles

Section 28 of the Transport Act 1985 gives Traffic Commissioners discretion following revocation of an operator’s licence to disqualify the former holder of the licence either indefinitely or for such period as he thinks fit. The power extends to disqualifying “any officer of a company” where the company was the holder of the licence and to any partner where the holder of the licence was a partnership.

Paragraph 7B(2) of Schedule 3 to the 1981 Act provides that if a Traffic Commissioner determines that a Transport Manager is no longer of good repute or professionally competent he must order that person to be disqualified.

### 3. Approach

Proper approach considered – “additional feature” not necessary – earlier decisions disapproved – Court of appeal approach in the Anglorom case (see Chapter 21 Appeals from Tribunal) not followed

#### 2005/355 Danny W Poole International

“We have to say that it appears that the *Anglorom* case was decided without consideration of all relevant cases. In particular, we have also to say that references in the Court of Appeal to “punishment” and to “this most draconian order” are not consistent with the approach of the five-judge Court of Session decision in the *Thomas Muir* case. Until the matter is considered again by an appellatant court we consider that the *Thomas Muir* approach should be followed, as we endeavoured to do in the *BE Clark* case.”

#### 2001/74 BE Clark

“We were also referred to 5/2000 Marilyn Williams and 18/2000 Euroline Transport Ltd, in the first of which the Tribunal stated that “an order for disqualification does not necessarily follow revocation but requires some additional feature which should be identified in the decision”. In mentioning the need for “an additional feature” we have to say that we consider that those two decisions go too far. The reasoning was based on *1995 G 36 Greylands Waste* which was decided before the decision in *Thomas Muir (Haulage Ltd v. Secretary of State* (1998 SLT 666): this held that traffic commissioners’ powers are to be exercised “to achieve the objectives of the system” rather than by way of punishment, with assessment of culpability and use of words such as “penalty” being inappropriate. The power to disqualify is contained in s.28(1) of the Act and no requirement for any additional feature is specified.



On the contrary, the provisions are in general terms, consistent with the *Thomas Muir* case. Of course, disqualification is not always ordered in addition to revocation. However, there are cases in which the seriousness of the conduct is such that a traffic commissioner may properly consider that both revocation and disqualification are necessary for the purposes of enforcing the legislation. We think that this is just such a case and hope that operators and drivers will be in no doubt as to the view which traffic commissioners and the Tribunal take of this type of conduct.”

Principles derived from earlier decisions

[T/2010/029 David Finch Haulage](#)

“The principles that derive from these and other cases on the point can be simply stated. The imposition of a period of disqualification following revocation is not a step to be taken routinely, but nor is it a step to be shirked if the circumstances render disqualification necessary in pursuit of the objectives of the operator licensing system. Although no additional feature is required over and above the grounds leading up to revocation, an operator is entitled to know why the circumstances of the case are such as to make a period of disqualification necessary. Additionally, periods of disqualification can range from comparatively short periods to an indefinite period, and can be confined to one traffic area or be extended to more than one. An operator subject to a period of disqualification is entitled to have some explanation, or a glimpse into the Traffic Commissioner’s mind, so that he understands why a particular order for disqualification has been made. The giving of brief but adequate reasons will also promote a consistent approach, and explain why distinctions are made as between different cases and different people.”

The decision in David Finch Haulage helpfully summarises earlier decisions on the correct approach to disqualification but the actual decision to reduce the length of the disqualification turns on the particular facts of that case. It is unlikely to be of assistance in determining whether or not a particular period of disqualification is appropriate in another case

[T/2012/56 & 57 Deep Transport Ltd & Midland Transport Ltd](#) (see paragraphs 14 & 15)

The decision in David Finch Haulage pre-dates the issue of the Senior TC’s Statutory Documents, and, in particular Document No. 10. The starting point for disqualification after a first Public Inquiry is 1 to 3 years, but serious cases may merit disqualification of between 5 and 10 years or in certain cases indefinite disqualification.

[T/2014/40 & 41 C G Cargo Ltd \(Operator\) & Sukwinder Singh Sandhu \(Director\)](#)

(Quotations from Document No. 10 are set out in paragraphs 12 and 13 and at paragraph 14 the Tribunal stated that David Finch Haulage should not be relied on to criticise fixed term disqualifications of more than 3 years).

The Court of Appeal considered the distinction between guidance and general directions in the Senior TC’s Statutory Document No 10 in [Coach Hire Surrey Limited and Paul Jones v Traffic Commissioner for the London and South East Traffic Area and Secretary for State for Transport \[2020\] EWCA Civ 1706](#). Lord Justice McCombe concludes (at paragraph 29):

In my judgment, because of the distinction between “guidance” and “general directions” in PSVA 1981 s.4(C)(1), it is to the *Guidance* section of the document that TCs must turn in exercising powers as to penalty or sanction. That section of the document provides no definitive “steer” as to the length of any



disqualification period.... The TCs cannot be fettered by what appears in paragraph 100 in making their own decisions in individual cases, but the thinking that appears in the paragraph cannot be put entirely out of mind as part of the relevant background. It certainly influenced the UT in the *CG Cargo* case and they can hardly be faulted in being so influenced.”

Traffic commissioners should assess the level of risk which arises from the way in which an operator operates and the degree of responsibility of those in charge. In appropriate cases they are entitled to disqualify on the basis of the degree of risk. They are not compelled only to act after death or serious injury or damage has resulted from the method of operation. (this approach is also appropriate in cases where suspension, curtailment or revocation are under consideration).

[T/2012/44 Highland Car Crushers Ltd](#)

Revocation of the licence is an essential pre-condition to disqualification

[2009/498 G. Sunderland and J. Warburton](#)

In an appropriate case disqualification can be ordered following the revocation of an interim licence

[T/2012/13 Russet Red Ltd](#)

Partners disqualified for different periods without explanation

[2005/367 K Jaggard](#)

Disqualification is a significant infringement of rights and procedures must be properly addressed – notice of possibility of disqualification must be given and the start date and duration must be specified

[2000/6 AJ Cassells](#)

No power to backdate disqualification to date of PI

[T/2019/24 The Skiers Lodge Ltd trading as TSL and Others](#)

Period of disqualification must be specified – there is no power to impose a minimum period

[2001/6 M-Line](#)

Failure to refer to possibility of disqualification in call-up letter not cured by subsequent opportunity to make representations – in circumstances TC should have offered adjournment and further hearing

[2001/11 Pagoda Travel](#)

See also [2002/40 Thames Materials](#) (at paragraphs 12 & 13), and [T/2018/72 St Mickalos Company Ltd and Michael Timinis](#) (paragraphs 17 to 21)

Where the operator is represented by specialist transport lawyers and they fail to address the TC on disqualification at the PI, and then are not invited to do so by the TC, the representative on an appeal may be required to address the Upper Tribunal on disqualification if they seek to rely on that failure as a ground of appeal.

[T/2019/55 Samra Food Service Ltd and Hardeev Singh Samara](#) (paragraph 27). A similar approach was taken in [T/2019/47 Keith Bute](#) and [T/2019/51 Clarks Caravan & Boat Haulage Ltd, Martyn Clark and Paul Clark](#) – see paragraph 23.

Disqualification for indefinite period – limited conduct – not proportionate

[2002/30 S Lloyd](#)

(see also [2004/81 C Roffey](#) (paragraph 10)

[2005/355 Danny W Poole International](#) (paragraph 6)

[2005/426 KS Oakhal](#)) (paragraph 8)

But disqualification for an indefinite period may be necessary in circumstances where a Transport Manager ought to be compelled to re-qualify

[T/2012/71 Silvertree Transport Ltd](#)

TC overstated evidence – misdirection – disqualification set aside

[2001/69 KG Farrow](#)

Position of wife considered – joint operator with husband – equal responsibility

[2001/40 P Gilliar](#)

No power to disqualify secretary of company who is not a director

[2002/94 BKG Transport](#)

Disqualification does not automatically include being a “consultant, manager or employee” of an entity holding an operator’s licence. All will depend upon whether, irrespective of the job description, within or as a consultant to a licence holder, a disqualified person is by themselves or with others, operating PSV vehicles.

[T/2020/12 Michael Hazell \(paragraph 73\)](#)

Imposition of condition on grant of licence preventing employment of named disqualified persons

[2005/457 LJ Ings](#)

Review under s.28(6) of 1995 Act

[2007/61 R D Land](#) (paragraph 2(vi))

[2008/593 MJ Graves](#) (principles to be applied – bad case)

Reluctance of Tribunal to vary order of disqualification because it has not seen the witnesses

[2001/15 K Malone](#)

For collective responsibilities of directors see [Chapter 12 – Directors’ Duties](#)

[2001/68 Dukes Transport](#)

[2002/75 Hazco Environmental Services](#)

“During the course of his submissions Mr Allan referred us to *Thomas Muir (Haulage) Ltd v. Secretary of State for the Environment, Transport and the Regions* (1999 SC86) and we noted the following:

“..... it does not follow that a traffic commissioner is prevented from taking into account, where appropriate, some considerations of a disciplinary nature and doing so in particular for the purpose of deterring the operator or other persons from failing to carry out their responsibilities under the legislation. However, taking such considerations into account should not be for the purpose of punishment *per se*, but in order to assist in the achievement of the purpose of the legislation. This is in addition to the obvious consideration that a direction may be used to provide direct protection

to the public against dangers arising from the failure to comply with the basis on which the licence was granted. Whether or not such disciplinary considerations come into play must depend upon the circumstances of the individual case.”

“We emphasise Lord Cullen’s reference to deterrence and have to say that all operators should realise that conduct of the sort in question here is not to be tolerated.

“.....

“Lastly, we were asked to scrutinise the disqualifications and their length. As we have indicated, this was a bad case in which we think that mandatory revocation followed an inevitable finding of loss of repute. In applying the *Thomas Muir case* a period of disqualification was also inevitable. In our view a period of three years for the Company and for Mr Torrens was in no way excessive. As to Miss Garnett, she was present throughout the public inquiry: she gave evidence in relation to financial standing and could earlier have been called to give evidence on the general issues if this had been thought to be desirable. As the Tribunal stated in *Appeal 1999 G36 Greylands Waste Ltd*:

“..... directors have collective responsibility for the company which they manage. It is their responsibility to set the standards which employees are expected to meet, it is their responsibility to ensure that those standards are met. Accordingly in our judgment, a Licensing Authority is entitled to assume, unless the contrary is proved, that directors are all equally responsible for the management of a company, with the result that they are all equally culpable for bad management. A director may be able to show, for example, by production of the minutes of directors’ meetings that he warned against the very problem which has given rise to the public inquiry but that he was out-voted. It might be very unfair in those circumstances to disqualify the director who gave a timely warning but all the more necessary to disqualify those who ignored the warning. It may be possible to show in a large company that individual directors have well defined roles, so that, for example, one director was very much more responsible for maintenance and road safety than others. That might enable some or all of the directors to avoid disqualification but it will not necessarily do so. .... It will be for the individual Licensing Authority to assess the culpability of directors on the basis of the evidence put before him in each individual case.”

As we also stated in [Appeal 6/2001 M-Line](#) “It is not enough for directors merely to perform on a reactive basis: their obligations are pro-active”. We think that on the evidence available the Deputy Traffic Commissioner properly distinguished between the positions of Mr Torrens and Miss Garnett and that his conclusion that she should be disqualified for one year cannot be faulted.”

#### 4. Directors

If the operator’s licence held by a company is revoked the TC has power to disqualify “any director of that company”, see s. 28(1) & (5)(a) of the 1995 Act, (similar provisions appear in s. 28 of the Transport Act 2000 and s. 25 of the 2010 Act). This raises the question of the true construction of the expression “any director”. This question was considered by the Tribunal in [T/2014/11 & 12 David Keith Bradley & Julie Bradley](#). The answer is that the expression any director covers anyone who, as a matter of fact, comes into one or more of the following categories:

- (i) De Jure Directors, in other words those lawfully appointed by the company who are named in the Register at Companies House, (paragraph 11),

- (ii) Shadow Directors, defined by s. 251 of the Companies Act 2006, (paragraph 12) and,
- (iii) De Facto Directors, in other words a person who is shown by the evidence to be part of the corporate governing structure of the company, (paragraphs 13-22).

Further guidance on the question of who comes within the definitions of Shadow Director and/or De Facto Director, and why, can be found in paragraphs 16-45 of the decision of the Court of Appeal in: [Smithton Ltd v Naggar \[2014\] EWCA Civ 939](#)

## 5. Removal.

There is power to cancel, or with the consent of the person disqualified, vary, an order of disqualification, (s. 28(6) of the 1995 Act, s. 28(6A) of the 1985 Act). The test to be applied on an application to cancel a disqualification is for the T C or the Tribunal to ask whether: *“it was appropriate or necessary in the public interest that a disqualification order be maintained”*.

[Appeal 2008/593 Martin John Graves v Secretary of State for Transport](#)

Helpful guidance on the application of this test can be found in paragraphs 3 and 4 of the decision in:

[T/2013/40 Southwaterstreet Ltd t/s S W Transport & Thomas McKinney](#)

See also:

[T/2014/59 Randolph Transport Ltd & Catherine Tottenham](#) where at paragraph 21 the Tribunal said:

*“Finally, in relation to indefinite disqualifications generally, the degree to which such disqualifications should continue to be regarded as draconian is tempered by the right of any disqualified individual or former operator to apply to have the disqualification brought to an end. The test in such cases will be whether or not the public interest requires that the disqualification should be maintained; the onus of establishing that the public interest does not so require will be on the applicant; and the starting point in nearly every case will be the original circumstances of, and reasons for, the disqualification – together with any evidentially established relevant events or developments occurring or arising subsequently, and the effect (if any) of the passage of time”*.

## 6. Transport Managers.

### (i) Disqualification

Disqualification is mandatory following a finding that a Transport Manager is no longer of good repute or no longer professionally competent. A Transport Manager's Certificate of Professional Competence is to be treated as 'not valid' while the disqualification is in force. It is open to a Traffic Commissioner to impose a 'rehabilitation measure' under paragraph 17(2) of Schedule 3 to the 1995 Act. The effect is to prevent the disqualified person from applying to cancel or vary the disqualification before the measure has been complied with. At the end of a fixed period of disqualification a CPC regains its validity and any rehabilitation measure ceases to

have effect. The provisional view expressed by the Tribunal was that an indefinite period of disqualification may be the only effective method of ensuring that the rehabilitation measure was complied with. See paragraphs 11-16 of:

[T/2012/71 Silvertree Transport Ltd](#)

The power to disqualify “the person” under paragraph 16(2) only applies to a person who is a transport manager within paragraph 16(1). The person in question was applying to be a transport manager but was never actually a transport manager on that licence.

[T/2017/38 J & K Environmental Services Ltd and Liliana Manole \(No.2\)](#)  
(followed in [T/2018/38 Steven James Lambie](#))

## (ii) Repute & Professional Competence

In [T/2014/25 & 26 H. Sivyer \(Transport\) Operator and Simon Sivyer \(Transport Manager\)](#) the TC found that the Transport Manager had lost professional competence but had not lost good repute. Having considered, (in paragraphs 15-17), the European and domestic legislation and the decision in Silvertree, above, the Tribunal concluded, (paragraph 18) that:-

*“The cumulative effect of all this is that - if an individual must be regarded as professionally competent if he or she has passed the relevant written examination or is the holder of another recognised qualification etc. - then this is not something that can be ‘lost’ in the same way that repute can be lost”.*

The Tribunal went on to explain, at paragraph 20, that where a transport manager has substantially failed in his or her duty to maintain continuous and effective control of an operator’s fleet of vehicles the remedy is to consider and where appropriate, find loss of good repute as a transport manager. In paragraphs 21-24 the Tribunal set out the consequences of such a finding, namely: (i) mandatory disqualification, (ii) inability to work as a transport manager, (iii) the CPC held by a disqualified transport manager is “not valid” for the period of the disqualification, (iv) unless a rehabilitation measure is imposed as a pre-condition to applying to cancel or vary an indefinite disqualification the validity of a disqualified transport manager’s CPC will be restored once the term of the disqualification expires.

[T/2014/42 Brian Robert Cutmore](#)

In the course of her decision the T C for Scotland said of the Appellant, in his capacity as transport manager:

*“ I cannot think of any rehabilitative measure which would restore the attitude of mind and fortitude towards compliance which is an essential characteristic for a transport manager”.*

The Tribunal upheld the T C’s finding the the Appellant had failed in his duty to maintain continuous and effective control of the operator’s fleet of vehicles and had, thereby, lost his good repute as transport manager. It upheld an indefinite disqualification, pointing out the right to apply to have it cancelled or varied.

## (iii) Length of Disqualification

In deciding the appropriate length of a disqualification, it is important to take into account the distinction between good repute and professional competence. Good repute is not automatically restored at the end of a disqualification. The validity of a CPC is automatically restored when a fixed term disqualification ends.

[T/2014/50 Andrew Harris t/a Harris of Leicester](#) (paragraph 16)

Given the different ways in which a CPC can be acquired there may be cases in which a Traffic Commissioner has concerns as to both good repute and professional competence, even though the holder of a CPC is deemed to be professionally competent while not disqualified. In a case in which disqualification is appropriate the only way in which concerns about the professional competence of a CPC holder can be met is by imposing an indefinite disqualification and adding, as a rehabilitation measure a requirement to re-qualify as a CPC holder.

[T/2014/50 Andrew Harris t/a Harris of Leicester](#) (paragraph 19)

(iv) Resumption of role after Disqualification

A TC is entitled to hold a Public Inquiry to determine whether or not a prospective transport manager satisfies the statutory requirements, which include being of good repute and professionally competent. In the case of a transport manager who has served a period of disqualification the fact that the fixed period has been served does not automatically mean that good repute has been restored. Instead it will be for the prospective transport manager to satisfy the TC that in addition to having the necessary knowledge he or she now has: *“the character, personality, ability and leadership qualities to ensure compliant operation as a operator or to effectively and continuously manage the transport activities as a transport manager”*. See paragraph 17 of-

[T/2014/50 Andrew Harris t/a Harris of Leicester](#)

On the other hand once a fixed term disqualification has been served the validity of a CPC is automatically restored. Unless the TC is satisfied that the prospective transport manager is not the holder of a valid CPC it is not open to the TC to challenge the fact that the prospective transport manager is professionally competent.



## Chapter 14 Termination by Law, Withdrawal & Surrender

### 1. Bankruptcy & Winding up

Power to direct that licence be continued under s.45(5) of 1995 Act not limited to non-payment of fees but may be used as basis for orders of revocation on other grounds and for disqualification – operator not entitled to allow licence to lapse so as to avoid adverse finding

[2000/6 AJ Cassells](#)

Termination by winding up – reg.23 of 1995 PSVOL Regs considered

[2003/138 P Coakley](#)

### 2. Non-payment of Fees – The Law

#### (i) Duration of Licences

Under s. 16(2) of the 1995 Act in the case of HGVs: *“subject to its revocation or other termination under any provision of this Act or any other statutory provision an operator’s licence (other than an interim licence issued under section 24) shall continue in force indefinitely”*.

The position is the same for HGV operator’s licences issued in NI, see s. 15(2) of the 2010 Act and for PSV operator’s licences, see s. 15(2) of the 1981 Act.

#### (ii) Requirement to Pay Fees

In the case of an HGV operator’s licence issued under the 1995 Act s. 45(4) provides that: *“If any fee or instalment of a fee in respect of the continuation in force of an operator’s licence is not duly paid by the prescribed time, the licence terminates at that time”*.

In the case of an HGV operator’s licence issued in NI the terms of s. 47(4) of the 2010 Act are identical to s. 45(4).

In the case of a PSV operator’s licence the provisions of s. 52(2C) of the 1981 Act, although not identical, are effectively the same.

#### (iii) The Prescribed Time

In the case of an HGV operator’s licence issued under the 1995 Act the expression ‘prescribed time’ is defined in the Goods Vehicles (Licensing of Operators) (Fees) Regulations 1995, (“the 1995 Fees Regulations”). Part I of the Schedule to these Regulations provides that the continuation fee must be paid: *“before the end of the month which precedes the date of expiry of a period of 5 years beginning with the date of either the issuing of the licence or the most recent 5 year anniversary of that date whichever is the later”*.

In the case of an HGV operator’s licence issued in NI the position is different because Regulation 4 of the Goods Vehicles (Licensing of Operators) (Fees) Regulations 2012 provides that: *“the fee payable for the continuation of an operator’s licence shall be paid at least 28 days before the date of expiry of a period of 5 years, beginning with the date of either the issuing of the licence or the most recent five year anniversary of that date”*.



In the case of a PSV operator's licence the expression 'prescribed time' is defined in the Public Service Vehicles (Licensing of Operators) (Fees) Regulations 1995, ("the 1995 PSV Fees Regulations"). The Schedule to these Regulations provides that the fee for the continuation in force of an existing standard or restricted licence must be paid: "*before the expiry of a period of 5 years (beginning with date of either the grant of the licence or the most recent 5 year anniversary of that date, whichever is the later)*".

**It follows that there are three different definitions of 'prescribed time'.**

(iv) Consequences of Non-Payment.

In the case of operator's licences issued under all three Acts the consequence of failing to pay by the prescribed time is that the licence terminates automatically.

(v) Discretion to Disregard.

In the case of an HGV operator's licence issued under the 1995 Act s. 45(5) provides that: "*The Traffic Commissioner may, if he considers there to be exceptional circumstances that justify his doing so in any case where subsection (3) or (4) has applied, direct that as from the time mentioned in that subsection its effect in that case be disregarded*".

Identical provisions can be found in s. 52(2E) of the 1981 Act and in s. 47(5) of the 2010 Act.

Power under s.45(5) is exercisable on the TC's own motion – see [T/2018/68 D&A 003 Ltd](#) (paragraphs 39-42)

### 3. Non-Payment of Fees - Practice

- (i) Although there is no statutory right of appeal the Tribunal has been prepared to accept appeals against a refusal to disregard the automatic termination of a licence and it has done so to the knowledge of the Department.

[2009/518 Rose and Sons Ltd](#)

See also:

[NT/2013/52 & 53 Fergal Hughes v DOENI & Perry McKee Homes Ltd v DOENI](#) (at paragraphs 24-25)

[T/2013/58 & 75 Patrick Ward t/a Allshires Landscapes & Overbrook Recovery Services Ltd](#) (at paragraphs 31-33) (Note, an amended decision has been issued).

- (ii) However, there is no power to grant a stay for the reasons given in [T/2013/64 Michael Steven Reed](#) (see paragraphs 14-18 subject to changing the first two references to s. 28 of the 1995 Act to s. 29)

[T/2013/58 & 75 Patrick Ward t/a Allshires Landscapes & Overbrook Recovery Services Ltd](#) (at paragraphs 34-38, amended decision)

[T/2014/20 Seamus Joseph Patterson t/a Patterson Plant](#) (at paragraphs 26-28).

In future applications to stay decisions refusing to disregard automatic termination are liable to be dismissed on a summary basis without consideration of their merits.

- (iv) In an attempt to mitigate the difficulties caused by the inability to grant a stay in these cases the Tribunal will be prepared to determine such appeals on the papers if the Appellant expressly agrees to that course. See paragraphs 38-42 of: [T/2013/58 & 75 Patrick Ward t/a Allshires Landscapes & Overbrook Recovery Services Ltd](#) (amended decision)
- (iv) There is no requirement in the 1981, 1995 and 2010 Acts or in any of the Regulations made under them for any reminder to be sent, let alone an obligation on the Traffic Commissioner to ensure that a reminder is received. It is the responsibility of an operator to pay the continuation fee on time. [2008/569 D Collingwood](#)  
[NT/2013/52 & 53 Fergal Hughes v DOENI & Perry McKee Homes Ltd v DOENI](#)
- (v) As a matter of courtesy letters are usually sent to the correspondence address held by the Central Licensing Unit, (it is the operator's responsibility to ensure that they have kept the CLU up to date as to the correct address). However, in the case of an HGV operator's licence issued under the 1995 Act the terms of the licence create a reasonable expectation that a request for payment of the continuation fee will be sent to the operator's last notified correspondence address, see paragraphs 8-13 of:  
[T/2013/58 & 75 Patrick Ward t/a Allshires Landscapes & Overbrook Recovery Services Ltd](#) (amended decision)
- (vi) General guidance in particular as to 'exceptional circumstances' that 'justify' disregarding automatic termination can be found in:  
[T/2010/016 & 021 Alan Cooper Haulage & Woodhouse Furniture](#)  
[NT/2013/52 & 53 Fergal Hughes v DOENI & Perry McKee Homes Ltd v DOENI](#) (paragraphs 13-19)
- (vii) The correct approach and the questions which need to be considered when deciding whether or not there are exceptional circumstances were considered in:  
[T/2014/51 Michael Thomas Aylesbury t/a MT Aylesbury](#)
- The main question that arises is this: *“was the late payment of the continuation fee the result of exceptional circumstances that justified the Traffic Commissioner in disregarding the automatic termination of the licence?”*
- In order to come to sound conclusions and to avoid taking into account irrelevant considerations it is likely to be helpful to sub-divide this question as the Tribunal did in paragraphs 14-20 of this decision.
- (viii) Practical and reliable ways in which to ascertain the prescribed time for payment were considered in:  
[T/2014/20 Seamus Joseph Patterson t/a Patterson Plant](#) (paragraphs 14-17)
- (a) The date on a vehicle licence disc is always the date by which a continuation fee must be paid, (paragraph 17)
  - (b) Operators registered with DVSA for the self-service system can always ascertain the payment date through this system, (paragraph 15)
  - (c) Operators who have received a renewal letter can ascertain the date by which both the current payment and the following payment must

be made. A diary entry, carried forward for five years avoids the risk of a subsequent renewal letter not being received, (paragraph 14)

- (ix) Failure to pay in time – exceptional circumstances under s. 45(5) 1995 Act considered. These cases should all be read in the light of [T/2010/016 & 021 Alan Cooper Haulage & Woodhouse Furniture](#) and [T/2014/51 Michael Thomas Aylesbury t/a MT Aylesbury](#)

[2001/62 TSG Smith](#) (moving house)

[2002/28 FTM Specialist Services](#) (bereavement)

[2002/50 DJ Richardson](#) (accident – delay)

[2004/23 RJ Mortimore](#) (notice sent to business address)

[2004/30 TR McPhee](#) (delayed and unstamped envelope)

[2004/43 RK Wholesale](#) (misleading conduct by Area Office)

[2004/211 Plumbing & Heating Co](#) (postal delay)

[2006/266 Sussex Demolition Services](#) (payment of annual but not continuation fee)

[2007/27 Suffolk Gate](#) (delay in applying to set aside)

[2008/569 D Collingwood](#) (cases reviewed – Act does not require reminders)

- (ix) Deliberate non-payment to cause termination in order to avoid PSV penalty payment

[2006/482 Alison Jones](#)

- (x) It will be wise, in some cases, to make further inquiries. An apparently plausible explanation may not be all it seems to be.

[T/2013/17 Francis Edward Walter Cantle](#)

#### **4. Withdrawal**

Withdrawal of an application does not prevent TC from making a determination, but TC must then ensure that operator aware of decision to continue

[2002/8 Alcaline](#)

[2008/688 D Pritchard](#) (paragraph 3)

The approach in [2002/8 Alcaline](#) and [2008/688 D Pritchard](#) was agreed in [T/2017/018 Davis Haulage Group Ltd.](#) The Upper Tribunal added (para.8):

“[T]he rules of natural justice and fair procedure require that if the Commissioner is minded not to accept the withdrawal he should give some intimation of that to the parties and invite the parties to make representations before finally deciding whether to accept the withdrawal. Any decision not to accept a withdrawal must be explained.”

#### **5. Surrender**

Circumstances in which surrender of licence should be accepted considered

[2004/362 Britannia Hotels](#) (paragraph 4)

[2004/129 Buzy Bus](#) (paragraph 6)

[2005/426 KS Oakhal](#) (paragraph 5)

[2006/482 Alison Jones](#) (attempt to avoid penalty payments)

[T/2018/61 CFS Scaffolding Ltd](#) (paragraph 29)

A TC has the right to refuse to accept the surrender of an operator's licence where the application to surrender is made at a time when the TC was "considering taking action under s. 17(1) or (2) of the 1981 Act".

[T/2015/10 Cornwall Busways Ltd](#) (paras 6 & 7).

## 6. Death

An operator's licence held by an individual terminates on the death of that individual, see s. 16(5) of the 1995 Act. In the case of partnerships that subsection is modified by Regulations 29(8) of the 1995 Regulations so that an operator's licence granted to a partnership terminates if the partnership is dissolved. See paragraph 41 of [T/2015/74 Ian Phillips](#).

TCs have power to mitigate the consequences of s.16(5) if an application is made under Regulation 31 of the 1995 Regulations. That Regulation empowers a TC, in certain circumstances, which include the death of the licence-holder to: "direct that any operator's licence is to be treated (for such purposes, for such period and to such extent as may be specified) as held not by the person to whom it was issued but by such other person carrying on that person's business, or part of that person's business, as may be specified". If there are special circumstances the direction can be made for a period not exceeding 18 months. In any other case the direction can be made for up to 12 months. In each case the period starts on the coming into force of the direction. See paragraphs 47-52 of [T/2015/74 Ian Phillips](#).

The general rule, subject (a) to any contrary agreement between the partners and (b) to the partnership having more than 2 partners, is set out in s. 33(1) of the Partnership Act 1890 namely that: "every partnership is dissolved as regards all partners by the death ... of any partner". It follows that the death of a partner in a partnership holding an operator's licence is a 'terminating event', (see Regulation 29(11) of the 1995 Regulations).

In [T/2015/74 Ian Phillips](#) the Tribunal concluded, (see paragraphs 55-60), that a TC has power to make a direction under Regulation 31 following the death of a partner. It referred to this passage in the decision of the Court of Appeal in [Sadler v Whiteman \[1910\] 1 K.B. 868](#)

"The fallacy is to say that a partner in a firm does not, but the firm does, carry on business. In English law a firm as such has no existence; partners carry on business both as principals and as agents for each other within the scope of the partnership business; the firm name is a mere expression, not a legal entity ... It is not correct to say that a firm carries on business; the members of a firm carry on business in partnership under the name or style of the firm".

In other words the death of one partner in a partnership which holds an operator's licence amounts to the death of a licence-holder for the purposes of an application under Regulation 31.

## Chapter 15 Public Service Vehicles

### 1. Senior Traffic Commissioner's Statutory Guidance

On "Local Buses in England (outside London) and Wales" can be found at:

<https://www.gov.uk/government/publications/traffic-commissioners-local-bus-services-in-england-outside-london-and-wales-november-2018>

The Practice Direction on "Standards for Local Bus Services", which only applies in Scotland, can be found at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/4324/practice-direction-standards.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/4324/practice-direction-standards.pdf)

### 2. Burden of Proof & General approach

Burden of proving reasonable excuse for failures under s.6 of 1985 Act is on operator – TC may take global approach in appropriate case – regulation of buses considered generally – see comments of Court of Appeal in Ribble case in [Chapter 17 Appeals from Tribunal](#) – but for burden of proof generally see Muck It case in [Chapter 17 Appeals from Tribunal](#)

Size of samples of failures under s.6 of 1985 Act and meaning of "window of tolerance" and "reasonable excuses" considered – (see *Ribble* case above)

[2000/24 Arriva Tees & District](#)  
[2000/57 Yorkshire Rider](#)

### 3. Repute

"Conduct" within Schedule 3 of 1981 Act may include matters on which no conviction has resulted – s.26 of 1985 Act is not exhaustive and may support findings under s.17 of 1981 Act

[2000/16 Group Taxibus](#) (paragraph 7)  
[2000/29 Harveys' Coaches](#) (paragraph 3)

### 4. Miscellaneous points

Operation of PSVs at airport – difficult area of law – TC should give operator benefit of doubt rather than speculate

[2000/28 Excellent Connections](#)  
(see also [2002/39 Excellent Connections](#)) (paragraphs 7-10)

Extended journey to overcome condition requiring 15 miles or more

[2006/321 1<sup>st</sup> Call Limousines](#)

Identity of operator – s.81(1) of 1981 Act considered – TC entitled to investigate

[2003/62 Tachograph Centre](#)

Vehicle hiring agreements – ‘disc swapping’ – a disc alone cannot be hired by one operator to another – a ‘detailed paper-trail’ is needed to demonstrate legitimate use of a disc belonging to another operator - guidance as to the correct approach:-

[2010/84 & 86 Coach Express Ltd](#) (paras 72-75).

The second definition of PSV, (s. 1(1)(b) of the 1981 Act), and the impact of various other Acts on this definition was considered in:

[T/2013/63 Balwant Singh Uppal t/a Professional Chauffeuring Services & PCS Limos Ltd](#)

A very clear and helpful description of some of the circumstances in which a vehicle with fewer than 9 passenger seats can be used, lawfully, under a PSV operator’s licence was given by the T C for the North East of England and is quoted at paragraph 2(xvi) in [T/2014/31 James Fleming](#)

*“2. Vehicles with fewer than nine passenger seats cannot normally be considered to be public service vehicles except in very limited circumstances. The first, under section 79 of the Public Passenger Vehicles Act 1981 allows their use by an operator of larger vehicles provided their use forms only a small part of the overall public service vehicle operation. That exemption is not relevant here.*

*3. The second opportunity to use vehicles with fewer than nine passenger seats arises from the definition of a public service vehicle in Section 1 of the Act. This allows a vehicle with fewer than 9 passenger seats to be considered a public service vehicle if a range of conditions are met. In short, these are that:*

- *Separate fares are charged to each passenger,*
- *Fares to passengers must differentiate based on distance travelled.*
- *Journeys must be advertised in advance in such a way that there is a genuine opportunity for individual members of the public to travel on them, and*
- *The operator, or a paid intermediary, must either bring the passengers together or make the arrangements for the payment of separate fares.*

*4. This is set out clearly in VOSA’s Guide for Operators of Stretched Limousines. That document states “Limousine operations using vehicles adapted to carry fewer than 9 passengers are likely to fall outside the PSV operator licensing regime and require a PHV licence, as they are unlikely to meet these conditions”. More recent guidance to prospective operators of small limousines on the GOV.UK website goes further and states “For small limousines – seating up to 8 passengers - you’ll need a private hire vehicle (PHV) operator licence”.*

The exemption provided if the terms of s. 1(4) of the 1981 Act are met relates to the operation of a PSV under s. 1(1)(b) of the 1981 Act, which also uses the expression ‘separate fares’. It is not a ‘stand alone’ provision, nor does it apply to vehicles operated under s. 1(1)(a) of the 1981 Act.

[T/2013/56 Bradley Fold Travel Ltd & Peter Wright \(paragraph 106\)](#)

Meaning of ‘hire or reward’

[T/2013/56 Bradley fold Travel Ltd & Peter Wright](#)

At paragraph 108 the Tribunal said:



*“There is no doubt that s. 1(5) gives the term “hire or reward” a wide meaning and when considered alongside the test adopted by the Divisional Court in Albert v Motor Insurers’ Bureau (supra) (as set out in paragraph 49 above) the term clearly includes the manner in which Mr Wright was operating the vehicles despite the fact that he was doing his best to make a small annual loss”.*

[T/2017/76 Andrew Steven Gingell v DVSA](#)

At paragraphs 28 and 31, the Upper Tribunal said (agreeing with the submissions of Mr Nesbitt QC for DVSA):

*“The provision of transport to the school children went beyond the bounds of mere social kindness and had a flavour of business about it... Further, upon the basis of Mr Gingell’s evidence about the journeys being a “trial run” in order to win a contract with the parents, including the journey of 18 July 2017, the TC was plainly right in concluded that RX57 was being or had been used for reward and in particular, the school contract commencing in September 2017 which he estimated was worth “thousands”.*”

Paragraph 6 of the Public Service Vehicles (Operators’ Licences) Regulations 1995 that a TC must not refuse an application for an operator’s licence etc without a PI except where the application or the applicant’s conduct in relation to it is frivolous or unreasonable. Any refusal to hold a PI should explain why that test is met.

[T/2013/83 Ahmad Yusuf Kasam t/a Ahmad Kasam & Sons](#)

Requirement to hold a taxi licence – restricted public service vehicle operator’s licence under section 12(1) of the Transport Act 1985

[T/2021/05 Christopher Johnson](#)

## 5. Stretch Limos

The operator of a stretch limo only requires a PSV operator’s licence if the vehicle in question falls within the definition of a Public Service vehicle set out in s. 2(1) of the 1981 Act, namely: a vehicle ‘adapted’ to carry ‘more than eight passengers’, which is used to carry passengers ‘for hire or reward’.

[T/2012/53 Clayton Car Sales Ltd](#)

- (i) “Adapted” means “fit and apt for the purpose” of carrying more than eight passengers, or “suitable” for that purpose, (see paragraph 7)
- (ii) Whether or not a vehicle is ‘adapted’ within this definition is a question of fact which will turn on the purpose for which a particular vehicle is being used, how it is equipped and all the other relevant circumstances, (see paragraph 8-12)
- (iii) Evidence that the vehicle in question has never in fact carried more than 8 passengers is irrelevant because the question is whether or not it is fit and apt or suitable to do so, (see paragraph 17)
- (iv) In an impounding case it will be for VOSA to prove that the vehicle in question comes within the definition in s. 2(1), (see paragraph 13)
- (v) Using the minimum requirement of 400 mm per seated passenger provided by the PSV (Condition of Fitness etc) Regulations 1981 may be appropriate in the case of a mini-bus but is not necessarily appropriate in the case of a stretch limo, (see paragraphs 10-14)



- (vi) Whether or not a front passenger seat is fit and apt or suitable for carrying a passenger will depend on the circumstances of an individual case. It may be suitable in the case of a minibus but it is likely to be unsuitable in the case of a stretch limo because the person in the front passenger seat is likely to be isolated from the party in the back, (see paragraphs 13-15)

Stretch limos - no need for certificate of initial fitness

[2004/209 Home James Limousine](#)

Stretch limos – ‘dry hiring’

[2009/527 1<sup>st</sup> Class Limos](#)

The longer the operator of a stretch limo has remained outside the system the greater the care required on an application for an operator’s licence.

[2010/81 Natalie Hunt t/a wild Stretch Limousines](#) (para 11)

*“We sympathise with the Appellant’s frustration that whilst operators such as herself are attempting to bring themselves into the licensing system, others are continuing to operate outside of the system, without expending the considerable capital required to “COIF” their vehicles which is a necessary step to ensure that the vehicles are roadworthy. It appears that some operators are being allowed to continue to operate without any sanctions being imposed upon them. It may be small comfort to the Appellant, but the longer such unlawful operations remain outside the licensing system, the more difficult it will be for them to be granted licences if and when they choose to apply for them. Each application should now be considered with great care to ensure that the applicants are not taking advantage of a phoenix operation and/or a corporate veil in order to shroud previous unlawful operation from the Traffic Commissioners”.*

## 6. Repayments & Penalties

The approach to the imposition of penalties under s. 155 of the Transport Act 2000 was considered in detail in [T/2012/15 First Manchester Ltd](#) from which the following principles are derived:

- (i) Before a Traffic Commissioner can impose a penalty under s. 155 of the Transport Act 2000 he or she must be satisfied that the operator has ‘failed to operate a local service etc’ without reasonable excuse, or that the operator has failed on one or other of the other two grounds set out in paragraph 4. In other words proof of reasonable excuse is a complete defence not a method of mitigating the size of the penalty, (see para 6). The burden of proving ‘reasonable excuse’ rests on the operator, see [T/2015/08 Diamond Bus Ltd](#) at paragraph 30.
- (ii) Once satisfied that the operator had no reasonable excuse the Traffic Commissioner *“may impose a penalty”*. In other words the Traffic Commissioner must exercise this discretion and give reasons for so doing, (see para 8).
- (iii) Having decided to impose a penalty the Traffic Commissioner has a further though limited discretion as to the amount of the penalty. In exercising that discretion the Traffic Commissioner must take into account *“all the*

*circumstances of the case*". The discretion is limited because Parliament has imposed an upper limit to the amount of the penalty, (see para 9).

- (iv) Once the Traffic Commissioner has determined the amount of the penalty per vehicle this figure must be multiplied by the number of vehicles in the fleet. There is no discretion to take the course, for which many operators argue namely to multiply the penalty by the number of vehicles on the monitored route, (see paragraph 10).
- (v) Paragraphs 11-18 set out the general approach to calculating the amount of a penalty, identifying some of the factors that should be taken into account and others which ought not to be taken into account.

The wider discretion as to the amount of the penalty, provided by s. 155(2) of the 2000 Act, means that the need for a sample to be representative of all the routes operated by the operator in question is reduced, see paragraphs 19 – 22 of: [T/2015/08 Diamond Bus Ltd](#). At paragraphs 23 – 29 the Tribunal went on to consider the correct approach to the assessment of the significance of the sample.

What is to be counted as "reasonable excuse"? In [T/2018/50 Diamond Bus Ltd](#), the Upper Tribunal said (paragraph 31):

"We agree that the question of reasonable excuse is built in to the analysis right from the beginning, but the question is what is to be counted as a reasonable excuse. The answer is (a) that everyday occurrences are taken into account by the application of the 6 minute window and the flexible 95% rule (rather than having a 100% rule, or a rule that failure to achieve 95% will inevitably result in sanctions) and (b) that extraordinary occurrences will be considered on their own merits. Rather than Mr Backhouse's three stages, this really all amounts to one stage in which is decided how to apply the statutory defence of reasonable excuse. This is all in the context of there being timetables supplied by operators which they have initiated or to which they have agreed, with knowledge of how regulatory enforcement currently works, and from which they cannot then be allowed to depart at will."

Payment of penalty under s.155 of 2000 Act considered

- [2003/300 Andrews \(Sheffield\)](#) (Dismissed, these cases turn on their own facts)
- [2005/323 Eurotaxi](#) (At paragraph 3: "*We have reminded ourselves of the purpose of the penalty imposed under, s. 155 of the 2000 Act, which is to focus the Operator upon the importance of a reliable time table and the need to act upon indications that time tables cannot be complied with, as a matter of urgency*").
- [2006/482 Alison Jones](#) (paragraph 12)
- [2007/311 Stagecoach](#) (penalty inappropriate)
- [2007/318 Eurotaxi](#) (bad case – objects of penalty considered)
- [2008/151 Tuc Tuc](#) (motorised rickshaws – penalty punitive)

Payment of penalty under s.39 Transport (Scotland) Act 2001 considered

- [2006/19 Bayview Enterprises](#) At paragraph 4: "*A Traffic Commissioner's powers are granted in order to enable him to "achieve the objectives of the system" rather than by way of punishment*".)
- [2006/351 Caledonian Coaches](#) (serious delay in giving decision – order set aside)

## 7. Cancellation of Registered Services

Notice to cancel registered services. Test to be applied where operator applies for period of notice to be abridged and relies on 'circumstances which could not have been foreseen'.

[2009/030 Pilkingtons Accrington](#)

“This raises the question: at what point is this test to be applied? In our view the wording of the sub-paragraph provides the answer. The test is not to be applied to the situation as at the date when the application for short notice cancellation is actually made. Instead the reference to ‘failed to make an application’ makes it clear that the test has to be applied at an earlier stage, namely at the date on which the operator would have made the application if he had been able to foresee the events which were not reasonably foreseeable. In our view any other construction would be liable to produce unfortunate and/or unfair results. It seems to us that the policy of the legislation is to ensure that operators take all reasonable steps to keep services operating but that if they do so and still find that it is not possible to operate a particular service that the Traffic Commissioner should have the power to abridge the period of notice. In other words the operator should be entitled to come to the Traffic Commissioner and to say: ‘I thought I would be able to keep this service running by doing ‘a’, ‘b’ and ‘c’, I did all those things but none of them worked, if I had foreseen that they would not work I would have applied to cancel the moment the problems arose’. In our view any other approach would discourage operators from trying to keep services running and encourage early applications for cancellation, many of which would fail because the Traffic Commissioner would say: ‘but you have not tried to do this, that or the other and it is reasonably foreseeable that one or more of those steps will enable you to continue to operate’.” “In our view if, by the time that the application comes to be decided, an operator can satisfy the Traffic Commissioner that ‘everything possible’ has been tried, but that it is still impossible to run the service in question, it seems to us that this is likely to be a strong pointer towards the fact that, due to circumstances which it could not reasonably have foreseen, the operator failed to make an application in sufficient time for the full period of notice to operate. The reason is that operators are only likely to take steps to keep a service running if, when they take those steps, they foresee that they are likely to be successful. In other words, if and when it becomes clear that apparently reasonable steps have been taken but have failed, the conclusion is likely to be that it was not reasonably foreseeable when the operator decided to take those steps that they would fail and that, if it had been, then an application to cancel the service would have been made, at that stage.”

## 8. Restricted Licences, main occupation

Meaning of “main occupation”

### [T/2017/2 Mohammed Akbar t/a Choudhury Transport](#) (para.14)

“Dealing first with the issue of main occupation, the definition of the term “occupation” to be found in the Oxford English Dictionary is in our view, a helpful and instructive starting point:

*“The state of having one’s time or attention occupied; what a person is engaged in; employment, business; work; toil. .. A particular action or course of action in which a person is engaged, especially habitually; a particular job or profession; a particular pursuit or activity”.*

That definition must then be considered in the context of Section 13 of the Public Service Vehicle Act 1981 which sets out the restrictions which an operator must fulfil and continue to fulfil, to be entitled to a restricted rather than a standard PSV licence. By s.13(3) of the 1981 Act the following restrictions must be satisfied:

- (a) The PSV is not adapted to carry more than eight passengers; or
- (b) The PSV is not adapted to carry more than sixteen passengers when used:-

- (i) Otherwise in the course of a business of carrying passengers; or
- (ii) By a person whose main occupation is not the operation of PSVs adapted to carry more than eight passengers.

It is clear from those restrictions that Parliament did not intend for restricted PSV licence operators to use their licences to operate vehicles on a commercial basis as their main business, employment or work activity. In order to assess whether a PSV operation is the “main occupation” of an operator, it is obvious that the hours dedicated to the PSV licence along with the income generated from it must be considered together and alongside the hours dedicated and income generated from other “occupations” the operator claims to have. It will of course be for the operator to satisfy the Traffic Commissioner that any particular activity other than PSV operation is an “occupation” from which income is generated and that overall, the PSV operation is not the “main occupation”. For future guidance, we do not consider that activities such as the pursuit of a hobby, charitable work or other activities which do not generate an income can fall within the definition of “occupation”. Neither do we consider that the receipt of investment or other income which does not require the operator to dedicate anything more than a minimal amount of time to it, can be considered to be an “occupation”. Each case will of course be fact sensitive.”

[T/2016/73 Pauline Marion Hukin t/a Red Fox Travel](#) (para.24)

“In view of Mrs Hukin’s contention that her main occupation is one of carer, we consider that further guidance is required. Bare assertion will not do. Clear evidence of employment or self employment will be required. Wage slips, accounts, bank statements, tax returns, P60’s are all examples of evidence which the operator or applicant for a licence will need to produce in order to establish that a particular activity is not only an occupation but their main occupation. In this case, clear evidence of the type mentioned will be required to establish that care is provided for financial reward and on a formal basis rather than care given gratuitously to members of the family out of familial love and duty. Evidence of the type similar to that already mentioned will also be required to show the level of income received and the time spent operating vehicles under the licence. The TC will then be required to undertake an assessment of the evidence and make findings of fact. Mrs Hukin will be required to produce probative evidence to support her contention.”

[T/2020/64 Manzoor Hussain Shah](#) (para 10)

“We did wonder whether, in circumstances such as those which appear to be appertaining here, there might be an argument to say that if an individual running a business is a carer for a person with disabilities, and if the caring duties take up sufficient time, such might be regarded as constituting the “main occupation”, though what was said in Mohammed Akbar t/a Choudhary Transport: [2017] UKUT 220 (AAC) very probably points to the contrary. But in appropriate and well-evidenced cases perhaps there might be some form of argument based upon disability discrimination. But we speculate.”

## Chapter 16 International Issues

### EU Law

International operators must comply with the law of the member state, which has granted their licence – issue of Community Authorisation – need for operation to permit proper and effective regulation in the UK where operator applies for or holds an operator’s licence in GB.

[2006/405 Transclara](#)

“..... in our view the correct questions for the Traffic Commissioner to consider were (a) whether the authorised operating centre was still being used as an operating centre so that the Traffic Commissioner retained jurisdiction to issue a Community Authorisation and (b) whether the Appellant was operating in a way which allowed for proper and effective regulation by the Traffic Commissioner in accordance with the 1995 Act, the Regulations made under that Act and all the relevant EU Regulations.”

(see also [2000/18 Euroline Transport](#) (UK manager of convenience)

[2003/176 Sigma Trans](#) (failure to use UK operating centre)

[2006/392 G Brandon](#) (need for UK transport manager)

[2007/172 Romantiek](#) (Belgian licensed vehicles impounded in UK)

Decision upheld by Court of Appeal – see [Chapter 17 Appeals from Tribunal](#) – and passage quoted

[Nolan Transport v VOSA & Secretary of State for Transport T/2011/60](#)

“Unless permitted to do so under an exemption it is unlawful, in Great Britain (“GB”), to use a goods vehicle on a road, for the carriage of goods, either for hire or reward or for or in connection with any trade or business carried on by the user of the vehicle, without holding a licence, (known as ‘an operator’s licence), issued under the Goods Vehicles (Licensing of Operators) Act 1995, [“the 1995 Act”]. See s.2 of the 1995 Act”.

A number of exemptions were considered in detail in this decision. Earlier decisions need to be considered in the light of what was decided in Nolan and in the light of Regulation (EC) No. 1072/2009 of the European Parliament and of the Council.

[International carriage](#) (Nolan paras 13-16)

The two main features are first, that the journey must start in one Member State and end in another Member State, and second, that the journey must be undertaken by a vehicle. For these purposes a vehicle means the tractor unit, whether or not coupled to a trailer. An uncoupled trailer cannot undertake international carriage.

[Cabotage](#), (Nolan paras 17-26 & 53).

The right to conduct cabotage begins when the unloading of an international carriage has been completed. The basic rule is that within 7 days of the unloading the tractor unit can undertake 3 cabotage operations. The 7 day rule is not qualified in any way but the 3 cabotage operations rule is qualified by ‘groupage’, see para 55. Article 8.3 of Regulation 1072/2009, (para 18), requires an operator who is claiming to conduct cabotage operations to produce a very full ‘paper trail’. The Tribunal concluded that the ‘clear evidence’ of this paper trail had to be kept in the vehicle so that it was available for inspection at the roadside, (paragraphs 27-52 set out the justification for that conclusion).

Combined Transport, (Nolan paras 59-68).

This involves a journey between Member States in three sections. In the case of Nolan Transport the first or last section took place on the roads of the Republic of Ireland, where Nolan held the equivalent of an operator's licence. The middle section involved a maritime journey, which exceeded 100km, as the crow flies, (but Combined Transport applies also to a middle section by rail or inland waterway). The third section of the journey, which can be the first or last leg, took place in the case of Nolan Transport on roads within GB. The relevant Directive provides that this section must take place "within a radius not exceeding 150kms as the crow flies" of the port etc of loading or unloading. The Tribunal decided that this meant what it said and that the whole of the journey in the host Member State had to be within the 150kms radius. The practical effect in the Nolan case was that they could not deliver to areas within the radius but on the English side of the Severn Bridge because the bridge itself is more than 150kms from Fishguard and Pembroke Dock, the ports used by Nolan's vehicles.

Unaccompanied trailers, see Nolan paragraph 69.

The general conclusion reached in Nolan in relation to exemptions, (paragraph 70) was that:-

"In our view there is a common feature running through all the exemptions to which we have referred, namely that they permit the temporary use of HGV's in Great Britain by operators from other Member States, who hold a Community Authorisation but who do not hold an operator's licence issued in GB. We are satisfied that these exemptions, whether taken singly or in combination, are not intended to allow an operator, who does not hold an operator's licence issued in GB, to operate in parallel to but outside the operator's licensing regime created by the 1995 Act and the Regulations made under it".

[T/2016/28 Bolle Materieel BV v DVSA](#)

This case further considers international carriage and cabotage.

The Upper Tribunal confirmed that a trailer can only take part in international carriage if it is part of a coupled combination with a tractor unit. An argument that travelling in possession of the relevant paperwork for an uncoupled trailer brought the trailer within the definition of international carriage was rejected (paras 3, 34-35).

On cabotage, the Upper Tribunal said (para 36):

"Article 8(2) of the 2009 Regulation deem that the incoming international carriage comes to an end when the goods are delivered by the vehicle combination and it is at that stage that hauliers, using the same tractor unit or vehicle, are then permitted to perform cabotage. It is clear from the wording of Article 8(2) and (3) that incoming international carriage must be completed by the same tractor unit without the uncoupling of the tractor unit and trailer. It does not envisage a situation where the tractor unit, having "parked" the trailer, then performs other work and in particular, the carriage of another trailer using the protection of the inward international carriage journey which has not yet been completed. Neither does it envisage or allow for the de-coupling of the tractor unit from the trailer and the delivery of the trailer and its contents using another tractor unit (as took place in this case). At the moment when the tractor unit and the trailer were separated and the tractor unit performs other work then the protection given by performing international carriage came to an end without delivery having been achieved by that vehicle. As a result, neither the tractor unit nor the trailer could be said to be engaged in international carriage from that point. The vehicle could



not be performing cabotage because the vehicle had not delivered its incoming load and it could not comply with Article 8(3) because it could not provide evidence of having delivered its incoming load. The vehicle combination when stopped must therefore have been undertaking a domestic journey for which a UK operator's licence was required."

[UA-2022-000589-T Bulk Tranz Haulage Ltd. Bulgaria](#)

The operator sought to rely on Article 462 of the Trade and Cooperation Agreement ("TCA") and the exemption from requirement to hold an Operator's Licence in the Goods Vehicle (Licensing of Operators) (Exemption) Regulations (Northern Ireland) 2012. The Tribunal found that none of the exemptions applied and detention of the vehicle "was lawful as the facts found indicated that this was a Northern Ireland based vehicle being operated by a Northern Ireland based entity and therefore required an NI operator's license."

Same vehicles cannot be specified in both Irish and Scottish licences

[2000/14 Reids Transport](#);

[2000/63 Reids Transport](#) (paragraph 5)

Protest by refusal to pay vehicle excise duty on vehicles mainly operating abroad – loss of repute

[2000/66 D Eccles](#)

Applied legislative provisions which have been repealed to the detriment of an operator:

[UA-2022-001525-NT Deborah Marie Toner t/a DDT Haulage](#)

[UA-2022-000811-NT Deborah Marie Toner t/a DDT Haulage](#)

No legal basis for the refusal of a standard international licence under section 12A(3)(c) and section 12A(2)(d) of 2010 Act respectively as the section was omitted by the Goods Vehicles (Licensing of Operators) Amendment Regulations 2022 and could not be used as the basis for the refusal decision.



## Chapter 17 Duties of Directors-Management of Transport Undertakings

### 1. Directors, shareholders and 'shadow directors'

- (i) A company can only act by a resolution of its members in general meeting or by its agents.
- (ii) A duly appointed director is the agent of the company. The company secretary can bind the company in relation to administrative matters and employees may be given authority to act on behalf of the company.
- (iii) Unless an exceptional provision has been included in the Articles of Association a shareholder, (even a 100% shareholder), is not the agent of the company. Before the actions of a shareholder can be attributed to the company it will first be necessary to show that 'the corporate veil' should be pierced or that s. 251 of the Companies Act 2006 applies.
- (iv) Section 251 refers to 'Shadow Directors and provides that: "*In the Companies Acts 'shadow director', in relation to a company, means a person in accordance with whose directions or instructions the directors of the company are accustomed to act*". However where directors act on advice given in a professional capacity the person giving the advice is not to be regarded as a Shadow Director, see s. 251(2).

### 2. Directors have collective responsibility

#### [2001/68 Dukes Transport](#)

"Mr Phillips' first main submission was that "the directors of Dukes honestly and reasonably believed that its system of managing and supervising the drivers' hours legislation was proper and worked well". He took us through references in the evidence to external analysis of tachograph charts and emphasised to us that Mr Scroggie had been responsible for supervising and checking the work of depot managers in relation to the enforcement of drivers' hours legislation. It was now clear that Mr Scroggie had failed properly to discharge his duties but this was not known to the directors, who had no reason to doubt that Mr Scroggie was not fulfilling his duties. The directors believed that the systems in place were operating properly and that the depot managers were being properly supervised. However, we do not think that this submission goes to the heart of the case. When dealing with the undertaking given by the Company (quoted in paragraph 2(xviii) above) the Traffic Commissioner's decision states:-

"57. .... this requires that an operator take positive action, not only upon the issue of a licence but thereafter, to fulfil this undertaking. It is not enough to set up a system and then walk away from it, assuming that others will fulfil it. This is confirmed by the Transport Tribunal in *Appeal 1999 L56 Alison\_Jones t/a Jones Motors*: "in our view this statutory undertaking requires more than that the operator should set up adequate systems and then leave them to run themselves; what is required is constant supervision and monitoring to ensure that the systems work". It is such a fundamental requirement of a road transport operator, for reasons both of road safety and of fair-trading, that it must be to the forefront in planning and executing of all his business. .... There was much discussion during this Inquiry about proper delegation, but this must be for the licence holder to decide. Although the company told me throughout the Inquiry that this function was totally delegated to depot managers and that there had been thought to be no need to audit them, it was equally clear from the statements of Mr Diamond and

## Chapter 17 Duties of Directors-Management of Transport Undertakings

Mr Scroggie that there was some rather vague and ill-defined duty upon Mr Scroggie to carry out some checks. I accept significant failure by depot managers, but I do not accept that the Directors can be exonerated from the massive failure evident throughout the company in regard to drivers' infringements and missing tachographs: they failed to ensure "constant supervision and monitoring" and so the systems failed."

"We affirm our view that the *Alison Jones* case correctly states the position. The Tribunal has subsequently repeated this in [45/2000 Martin Jolly Transport Ltd](#), [6/2001 M-Line Ltd](#) and [7/2001 Alcaline UK Ltd](#). We are a specialist tribunal, with lay members with business experience in transport. We think it right to point out that the *Alison Jones* case does indeed represent our view of an operator's duties.

.....

"We agree with the Traffic Commissioner's comments. We were reminded of what the Tribunal stated in *1999 G36 Greylands Waste Ltd*:-

"..... directors have collective responsibility for the company which they manage. It is their responsibility to set the standards, which employees are expected to meet, it is their responsibility to ensure that those standards are met. Accordingly in our judgment, a Licensing Authority is entitled to assume, unless the contrary is proved, that Directors are all equally responsible for the management of a company, with the result that they are all equally culpable for bad management. A director may be able to show, for example, by production of the minutes of directors' meetings that he warned against the very problem which has given rise to the Public Inquiry but that he was out-voted. It might be very unfair in those circumstances to disqualify the director who gave a timely warning but all the more necessary to disqualify those who ignored the warning. It may be possible to show in a large company that individual directors have well-defined roles, so that, for example, one director was very much more responsible for maintenance and road safety than others. That might enable some or all of the other directors to avoid disqualification but it will not necessarily do so ..... It will be for the individual Licensing Authority to assess the culpability of directors on the basis of the evidence put before him in each individual case."

"We can understand how the board may have chosen to show a common front to the Traffic Commissioner but we do have to observe that there is no evidence to enable distinctions to be made. We do not doubt that overall this was a case in which disqualification was necessary. Moreover, we think that the periods imposed by the Traffic Commissioner were appropriate."

[2002/75 Hazco Environmental Services](#) – see quotation [in Chapter 13 - Disqualification](#)

[2002/217 Bryan Haulage \(No.2\)](#) (paragraphs 14 & 15)

[T/2010/71 \(Eurofast \) Europe\) Ltd](#)

"Mr Harris challenged the Deputy Traffic Commissioner's reliance on [Dukes Transport 2001/68](#) and [1999 L56 Alison Jones](#). We consider that the Deputy Traffic Commissioner was entirely right to have regard to the important principles laid down in these long accepted cases. Directors have collective responsibility for the company that they manage. It is their responsibility to set the standards that employees are expected to meet; it is their responsibility to ensure that those standards are actually met, and that undertakings and promises made in their name are complied with. They have a duty, whether the company is large or small, to take proper steps to ensure that there are directors with appropriate knowledge of, and accountability for, the company's arrangements for securing and monitoring compliance, even where day-to-day

management of the transport operation is delegated to others. Accordingly, in our judgment, a Traffic Commissioner is entitled to assume, unless the contrary is proved, that an operator company is responsible and accountable for the actions and failures of its employees, and that directors are all equally responsible for the management of a company, with the result that they are all equally culpable for bad management.”

A person who remains a director of a company that holds an operator’s licence retains the responsibilities of a director for running the company and for ensuring that it operates in compliance with the regulatory regime even though they have given up day to day responsibility for running the company. A person who does not have day to day control is in a position to stand back and take a broader view of the way in which the company is operating. They are entitled, amongst other things, to inquire, to advise and to be consulted and, if not consulted, they can and should insist that consultation takes place.

[T/2014/09 Hunterstrong Engineering Ltd t/a Northover Heavy Logistics, Craig Northover and Gael Northover](#) (paragraph 35).

TC’s jurisdiction extends to past and present directors  
[2008/688 D Pritchard](#)

### 3. The Corporate Veil

Since a limited company is a separate legal entity it is wrong, as a matter of law, to equate a member of a company, such as a shareholder, with the company without making any finding that it is appropriate to pierce the corporate veil that separates them. However there will be cases in which the evidence shows that the member is the company and vice versa. Provided there is evidence to that effect and providing that appropriate findings are made based on the evidence it will be permissible to pierce the corporate veil.

In [T/2013/08 Vision Travel Ltd](#) the Tribunal said this at paragraph 9 of the decision:-

“We hold that the Traffic Commissioner’s finding that Mr Sharpe was ‘the controlling mind’ of the operator was an entirely rational conclusion for her to reach on the basis of the evidence before her. We further hold that by making that finding she has justified and explained her conclusion that for the purposes of the ‘good repute’ of the operator she could effectively equate Mr Sharpe’s conduct with that of the company. Mr Sharpe was correctly held to be the *alter ego* of the operator”.

It is important to note that when considering the good repute of a company paragraph 1(2) of Schedule 3 to the 1995 Act provides that the TC: “*shall have regard to all the material evidence*, including information as to the convictions and/or previous conduct of: “*any of the company’s officers, servants or agents or its directors in whatever capacity*”... . It is the absence of ‘shareholders’ from this list that makes it necessary to consider whether the corporate veil can be pierced if the actions of a shareholder are said to affect the good repute of a company.

In [UA-2022-000083-T](#) REL Haulage Limited, the Tribunal said

*“We do not seek to depart from what has been said in the above case law. But we are mindful that paragraph 1(2) of Schedule 3 to the Act requires a TC to have regard, amongst other things, to the previous conduct of the company or any of its officers, servants or agents, so long as it relates to the fitness to hold a licence (see above). That alone may justify the piercing of the veil with respect to such specified persons as it may be essential for it to be done so that the TC can perform his/her statutory duties. Further, it is apparent that there is no blanket bar to piercing the corporate veil for the purposes of inquiring into who is or might be the controlling mind of an incorporated applicant in the event of certain wrongdoing or impropriety. Such is often done in this jurisdiction in order to deal with a practice known as “fronting” whereby an applicant with a clean record might make a licence application, but the intention is that business operations conducted under the licence will be controlled by another who might not, if the application had been made in that others name, be given a licence possibly due to a poor track record within the industry regarding compliance or possibly due to his serving a period of disqualification. We appreciate that is not the situation which obtains here but the point is that wrongdoing can potentially justify the piercing. (para 63).*

Paragraph 2 of Schedule 3 to the 1981 Act is in similar, but not identical, terms. Paragraph 5(2) of The Goods Vehicles (Qualifications of Operators) Regulations (Northern Ireland) 2012 is identical to paragraph 1(2) of Schedule 3 to the 1995 Act.

A shareholder could be a shadow director, but there must be a finding and supported by evidence. In [T/2019/26 MacDonald Groundworks Ltd](#), the Upper Tribunal said (paragraph 54):

*“Ownership of 100% of the shares of the operator company does not necessarily imply that the shareholder is acting a director or managing the company. As we have previously noted, there was no evidence, nor has the Traffic Commissioner made findings of fact, that would satisfy the factors outlined in *Holland [Revenue and Customs Commissioners v Holland [2010] 1 WLR 2793]*... to allow her to conclude that [the shareholder] was acting as a “director” of the appellant company. In the absence of such a finding, her reasoning that the appellant could not be trusted, because she could not trust [the shareholder], is flawed.”*

[T/2019/26 MacDonald Groundworks Ltd](#) also confirms that where the appellant is required to notify the Traffic Commissioner of a change in ownership of the business, the appellant is bound to also notify whether the owner of the company was a disqualified director – see paragraph 44.

#### **4. Taking part in the Management of a Transport Undertaking.**

From time to time TCs accept undertakings that a particular person: *“will take no part whatsoever in the running/management of the business which holds an operator’s licence”*, or words to similar effect. In [T/2014/72 Ian Russell Nicholas t/a Wigan Container Services v Secretary of State for Transport](#) the Tribunal contrasted the mere storing of business records, which on its own was unlikely to amount to taking part in the management of a business, with a person being given the freedom to decide, unsupervised and unchecked what work to undertake. In *Wigan Container Services* the Tribunal concluded that such conduct amounted to a breach of an undertaking not to take part in the management of the business because it enabled the person named in the undertaking to take additional work, in excess of permitted hours, which was not recorded on his tachographs, (see paragraphs 21-24). At paragraph 23 the Tribunal said:-

*“Given the importance of the rules on drivers’ hours and tachographs, for the reasons we have already set out, we take the view that a decision as to how much work a business can do on any given day is a decision concerning the running and/or management of that business. There will be some transport businesses in which the operator personally takes all those decisions. There will be others, typically larger operators, in which others below the level of the people running and/or managing the business will take such decisions. But in a properly run transport business those responsible for the running and/or management of the business will set the policy, put in place guidelines, provide proper supervision and retain the ultimate responsibility for deciding what work can or cannot be done. In our view by abdicating his responsibility, and by allowing RN a free hand and the final decision as to what work he could take, the Appellant allowed RN to take part in the running and/or management of the business. That abdication of responsibility enabled RN to take advantage of the interrupter switch and to work in excess of permitted hours. That in turn meant that the Appellant’s business was competing unfairly in a highly competitive market”.*

## **5. Requirement to hold a driver CPC**

The company directors in [T/2017/47 Wish Travel and Transportation Services Ltd](#) argued that possession of a mobile phone used for the business was “equipment” for the purposes of European Directive 2003/59/EC and so the exemption under paragraph (2)(g) of Regulation 3 to the requirement to hold a driver CPC applied to them. The Upper Tribunal rejected this argument (see paragraphs 25):

*“The purpose of the exemption is to enable a person to transport his materials and equipment in the relevant vehicle which are necessary for him to undertake work. Our examples would be an electrician or plumber whose vehicles contain their tools along with some plumbing or electrical materials. Their principle activity is not driving the vehicle and the vehicle cannot be said to be engaging in the “carriage of goods” for hire or reward. It is not possible to interpret this exemption so as to include a relevant vehicle carrying passengers for hire or reward being driven by an occasional driver carrying with him a mobile phone and such an interpretation would be plainly wrong and in error.”*

The appellant sought to appeal to the Court of Appeal. Upon refusing permission, Floyd LJ gave the following reasons:

*“The appeal would not have a real prospect of success because the construction of the Directive and Regulations made thereunder adopted by the Upper Tribunal is unarguably correct. The notion that a driver comes within exception 2(g) and therefore does not need a CPC because he or she is carrying a mobile phone in her pocket is untenable. The exception is there for those who use the vehicle to carry material or equipment for some work other than driving, such as builders and plumbers.”*



## Chapter 18 Impounding

(See also [Chapter 16 International Issues](#) for cases, and, in particular [Nolan Transport v VOSA & Secretary of State for Transport T/2011/60](#) involving vehicles owned or licensed abroad

and [Chapter 22 Appeals from Tribunal](#) for the [Romantiek case](#))

### 1. Senior Traffic Commissioner's Statutory Guidance

On "Impounding" can be found at:

<https://www.gov.uk/government/publications/traffic-commissioners-impounding-november-2018>

### 2. The Right to Impound

In the case of Heavy Goods Vehicles this is set out in Regulation 3(1) of the Goods Vehicles (Enforcement of Powers) Regulations 2001, ("the 2001 Regulations"). It is important to remember that the 2001 Regulations have been amended in significant ways by the Goods Vehicles (Enforcement of Powers) (Amendment Regulations) 2009. Some of these provisions are set out in paragraphs 81-89 of the Nolan decision. However paragraph 86 is incorrect to this extent, Regulation 10(4) has been removed from the 2001 Regulations. Instead the grounds for return are set out in what is now Regulation 4(3) of the 2001 Regulations. They are in identical terms to those set out as Regulation 10(4) at paragraph 86 of Nolan.

In [UA-2023-000014-T Georgia Kelly Ash](#), the notices were notified to the wrong Chief Constable and therefore as the notices had not been correctly served under Regulation 9(1)(b)(iii) of the 2001 Regulations, the Tribunal held the appeal must be allowed. The Tribunal explained that did not mean the vehicle will be returned to the Appellant and the Appellant would need to establish on the balance of probabilities that she is the owner (paragraphs 4-5).

There is now a right to impound Public Service Vehicles, see the Public Service Vehicles (Enforcement of Powers) Regulations 2009.

### 3. The Right to Apply for Return

The only person entitled to apply, (under Regulation 10 of the 2001 Regulations for the return of an HGV or under Regulation 11 of the 2009 Regulations for the return of a PSV), is the owner at the time of the impounding. If there is any doubt as to whether or not the person applying for the return of the vehicle is in fact the owner of the vehicle the issue must be resolved first because the TC has no jurisdiction to order the return of the vehicle to anyone else.

[T/2012/58 Alan Knight Transport B.V. & Alan Michael Knight](#) (paragraph 7)

[T/2013/51 N P Clare Transport Ltd](#) (paragraph 13)

[T/2014/04 Ignition Credit Ltd & Thomas Richard Benny v DVSA](#) (paragraph 7)

The T C is entitled to clarify who is claiming to be the owner of an impounded vehicle and, where necessary, is entitled to amend the application by changing the name of the

entity making the application. A definition of 'owner' is set out in Regulation 2 of the 2001 Regulations.

[T/2013/15 Commercial Tradings Ltd](#) (paragraphs 5-8)

The 'owner' is not necessarily the registered keeper

[T/2018/25 Shaun Stark](#) (paragraph 19)

The Tribunal's provisional view is that it is only the legal, (as opposed to beneficial) owner of an impounded vehicle who can apply for its return.

[T/2013/51 N P Clare Transport Ltd](#) (paragraphs 16-17)

The approach to a late application for the return of an impounded vehicle and whether the person applying late is entitled to a hearing were considered at paragraphs 6-12 of:

[T/2013/51 N P Clare Transport Ltd](#)

Since it is only the owner who is entitled to apply for the return of an impounded vehicle TCs are entitled to determine the issue of ownership first. They are entitled to clarify any ambiguity as to who is claiming to be the owner. Clarity as to who claims to be the owner may be important in relation to those grounds for return which depend on the actions/inaction or state of mind of the owner of the impounded vehicle.

[T/2014/03 Sarah Boyes \(Paragraphs 6, 9 & 11\)](#)

The owner of an HGV or PSV will be well-advised to obtain and retain documentary evidence to demonstrate how, when and by whom ownership was acquired.

[T/2014/03 Sarah Boyes \(Paragraph 10\)](#)

#### **4. Grounds for Return**

The four grounds on which an application for the return of an impounded vehicle can be made are set out in Regulation 10(3) of The Public Service Vehicles (Enforcement Powers) Regulations 2009, Regulation 4 of the Goods Vehicles (Enforcement Powers) Regulations 2001, as amended, and Regulation 4(1) of The Goods Vehicles (Enforcement Powers) Regulations (Northern Ireland) 2012. The grounds are set out in identical terms as follows, (taken from the 2001 Regulations as amended):

*“(a) that, at the time the vehicle was detained, the person using the vehicle held a valid licence (whether or not authorising the use of the vehicle); (Ground 1)*

*(b) that, at the time the vehicle was detained, the vehicle was not being, and had not been, used in contravention of section 2 of the 1995 Act; (Ground 2)*

*(c) that, although at the time the vehicle was detained it was being, or had been, used in contravention of section 2 of the 1995 Act, the owner did not know that it was being, or had been, so used; (Ground 3)*

*(d) “that, although knowing at the time the vehicle was detained that it was being, or had been, used in contravention of section 2 of the 1995 Act, the owner-*

*(i) had taken steps with a view to preventing that use; and*

*(ii) has taken steps with a view to preventing any further such use”.*  
*(Ground 4)*



## 5. Ground 1

Few appeals argue this ground. This may not be surprising because an application under this ground immediately draws attention to the fact that the holder of an operator's licence has been using an unauthorised vehicle thus enabling the TC to decide whether or not to take regulatory action against the holder of the licence.

One case in which the ground was argued is [UA-2022-000004-NT Andrew Murphy Transport Ltd.](#)

## 6. Ground 2

There have been no decisions on appeals under this ground

## 7. Ground 3

In [T/2013/21 Societe Generale Equipment Finance Ltd v VOSA](#) (at paragraph 7) the critical issue in relation to Ground 3 was put in this way:

“Every claim for the return of a vehicle in which reliance is placed on Regulation 4(3)(c) of the 2001 Regulations as amended raises a deceptively simple question, which the Traffic Commissioner must answer. The question is this: *‘Has the claimant satisfied me that he, she or it probably did not know that the vehicle was being or had been used in contravention of s. 2 of the 1995 Act?’*”

It is important to bear in mind that this raises a question of fact, not law. The passages set out below seek to explain the legal meaning to be given to the words ‘know’ and ‘knowledge’. Properly applied these passages simply determine the questions of fact the answers to which will decide whether or not lack of knowledge has been proved, as a matter of law, by the entity applying for the return of the vehicle.

Where there is no evidence on the basis of which the T C could be satisfied that the applicant did not know of use in contravention of s. 2 of the 1995 Act or s. 12 of the 1981 Act there is no need to consider whether the case falls into any of the five categories of knowledge set out below.

“In our view Traffic Commissioners should start the process of answering the question posed at paragraph 7 by asking: *‘Is there any evidence before me on the basis of which I could be satisfied that the claimant probably did not know that the vehicle was being or had been used in contravention of s. 2 of the 1995 Act?’*”

[T/2013/21 Societe Generale Equipment Finance Ltd v VOSA](#) (paragraph 9)

Lack of knowledge by owner – “knowledge” in reg.10(4)(c) of 2001 Regs is wider than “actual knowledge” because an owner may not shut his her or its eyes to obvious – but a high degree of fault required

### [2003/3 Close Asset Finance](#)

“The question was what was meant by the word “know” in reg.10(4)(c) of the Regulations. It could not be limited to actual knowledge because Parliament could not have intended that an owner could be permitted to shut his eyes to the obvious. We were invited to consider *Commission for the New Towns v. Cooper (GB) Ltd* 1995 2All ER 929 at 946 where Stuart-Smith LJ said:

“Did CoopInd have actual knowledge of the mistake? The judge held not; they merely suspected it. Mr Wood submits that the judge was in error and he should have found actual knowledge. His attention was

drawn to the analysis of various forms of knowledge made by Peter Gibson J in *Baden v. Societe Generale pour Favoriser le developpement du Commerce et de l'Industrie en France SA* (1982)

[1992] 4All ER 161, [1993] 1WLR 509 and cited by Millett J in *Agip (Africa) Ltd v. Jackson* [1992] 4All ER 385 at 405, [1990] Ch 265 at 293:

“Knowledge may be proved affirmatively or inferred from circumstances. The various mental states which may be involved were analysed by Peter Gibson J in *Baden’s* case

[1992] 4All ER 161 at 235 as comprising: “(i) actual knowledge; (ii) wilfully shutting one’s eyes to the obvious; (iii) wilfully and recklessly failing to make such inquiries as an honest and reasonable man would make; (iv) knowledge of circumstances which would indicate the facts to an honest and reasonable man; (v) knowledge of circumstances which would put an honest and reasonable man on inquiry.”

According to Peter Gibson J, a person in category (ii) or (iii) will be taken to have actual knowledge, while a person in categories (iv) or (v) has constructive notice only. I gratefully adopt the classification but would warn against over refinement or a too ready assumption that categories (iv) or (v) are necessarily cases of constructive notice only. The true distinction is between honesty and dishonesty. It is essentially a jury question. If a man does not draw the obvious inferences or make the obvious inquiries, the question is: why not? If it is because, however foolishly, he did not suspect wrongdoing or, having suspected it, had his suspicions allayed, however unreasonably, that is one thing. But if he did suspect wrongdoing yet failed to make inquiries because “he did not want to know” (category (ii)) or because he regarded it as “none of his business” (category (iii)), that is quite another. Such conduct is dishonest, and those who are guilty of it cannot complain if, for the purpose of civil liability, they are treated as if they had actual knowledge.”

“After referring to this passage, the judge continued:

“I do not think that case assists him. Whatever view the courts may take in relation to other remedies, the Court of Appeal has emphasised in recent years that in cases of unilateral mistake nothing less than actual knowledge will do; in that context someone with less than actual knowledge will not in my judgment be taken to have actual knowledge (see *Agip SpA v. Navigazione Alta Italia Spa, The Nai Genova* [1984] 1 Lloyd’s Rep 353 and *Morsil Properties Ltd v. Allied-Lyons plc* [1986] CA Transcript 1132).”

The judge appears therefore to be holding that only Peter Gibson J’s category (i) is sufficient. But with all respect to him, this is not so; categories (ii) and (iii) also constitute actual knowledge in law.”

“We were also referred to *White v. White* (2001 2All ER 43, HL at 48) where Lord Nicholls stated:-

“There is one category of case which is so close to actual knowledge that the law generally treats a person as having knowledge. It is the type of case where, as applied to the present context, a passenger had information from which he drew the conclusion that the driver might well not be insured but deliberately refrained from asking questions lest his suspicions should be confirmed. He wanted not to know (‘I will not ask, because I would rather not know’). The law generally treats this state of mind as having the like consequences as would follow if the person,

in my example the passenger, had acted honestly rather than disingenuously. He is treated as though he had received the information which he deliberately sought to avoid. In the context of the directive that makes good sense. Such a passenger as much colludes in the use of an uninsured vehicle as a passenger who actually knows that the vehicle is uninsured. The principle of equal treatment requires that these two persons shall be treated alike. The directive is to be construed accordingly. "Thus far I see no difficulty. I consider that it is acte clair that these two categories of case fall within the scope of the exception permitted by the directive. Conversely, I am in no doubt that 'knew' in the directive does not include what can be described broadly as carelessness or 'negligence'. Typically this would cover the case where a passenger gave no thought to the question of insurance, even though an ordinary prudent passenger, in his position and with his knowledge, would have made inquiries. He 'ought' to have made inquiries, judged by the standard of the ordinary prudent passenger. A passenger who was *careless* in this way cannot be treated as though he *knew* of the absence of insurance. As Lord Denning MR said in *Cia Maritima San Basilio SA v. Oceanus Mutual Underwriting Association (Bermuda) Ltd, The Eurysthene* [1976 3All ER 243 at 251, [1977] QB 49 at 68, negligence in not knowing the truth is not equivalent to knowledge of it. A passenger who was careless in not knowing did not collude in the use of an uninsured vehicle, and he is not to be treated as though he did. To decide otherwise would be to give a wide, rather than a narrow, interpretation to the exception permitted by the directive. This also seems to me to be acte clair."

"In considering the meaning of the word "know" Mr McCreadie accepted that in categories (ii) and (iii), as mentioned, the meaning of the word "wilful" should be taken from *R v. Senior* (1899 1QB 283): "'Wilfully' means that the act is done deliberately and intentionally, not by accident or inadvertence, but so that the mind of the person who does the act goes with it". He accepted also on behalf of the Respondent that a distinction was properly to be made between honesty and dishonesty. He submitted that "mere failure to make all reasonable inquiries is not of itself sufficient to constitute knowledge, which is actual knowledge; negligence is not enough". In considering the issue of knowledge traffic commissioners should pose questions of the sort suggested by Millett J. If an owner suspects wrongdoing and then puts his head in the sand, he shuts his eyes to the obvious; but "a high degree of fault" is required for the failure to be wilful so as to constitute actual knowledge."

See [2007/205 Evergreen Leasing](#) (VOSA's approach to knowledge by leasing companies set out)

### [2011/21 Lombard North Central PLC](#)

The decision in Lombard North Central prompted a detailed re-consideration of this topic in the case of [2011/25 Asset 2 Asset Ltd](#). The five categories were re-stated using slightly different language, though the word 'wilfully' has been added to the quotation from paragraph 24 to make it clear that the change in language is not intended to reflect a change in meaning. Paragraph 27 stresses the importance of the motivation for an owner's conduct or failure to take steps, and the need to assess any explanation prompted by the question 'why did you take or refrain from taking the step in question?' Paragraph 28 makes the point that the findings required to put an owner within categories (ii) or (iii) are findings which inherently involve conduct which is dishonest, (deliberately and with a high degree of fault shutting your eyes to the obvious or deliberately, recklessly and with a high degree of fault failing to make the inquiries

which an honest and reasonable person would have made), with the result that no additional finding of dishonesty needs to be made.

The five categories are:

- (i) Actual knowledge;
- (ii) Knowledge that the person would have acquired if he had not (wilfully) shut his eyes to the obvious;
- (iii) Knowledge that the person would have acquired if he had not wilfully and recklessly failed to make such inquiries as an honest and reasonable person would make;
- (iv) Knowledge of circumstances that would indicate the facts to an honest and reasonable person; and
- (v) Knowledge of circumstances that would put an honest and reasonable person on inquiry.

[Nolan Transport v VOSA & Secretary of State for Transport T/2011/60](#)  
(paragraphs 110-121)

The 'lack of knowledge' ground for seeking the return of an impounded vehicle was considered in detail. As a result the approach in *Asset 2 Asset Ltd* was preferred to *Lombard*.

- (a) Cases of 'imputed actual knowledge' ie those falling into categories (ii) or (iii) involve action or inaction which is inherently dishonest with the result that no further finding of dishonesty is required
- (b) Cases of 'constructive knowledge' ie those falling into categories (iv) or (v) may arise through negligence. All cases in either of these categories require a separate finding of dishonesty, (or a dishonest motive for the action or inaction in question), if an adverse finding is to be made against a claimant.
- (c) It is advisable in all cases whether of imputed actual knowledge or constructive knowledge to make findings on the individual factors which show that a case comes into a particular category. This is particularly important in categories (ii) and (iii) because the more clearly the case is shown to come into one or other category the more obvious it will be that the action or inaction was inherently dishonest.
- (d) If, as in *Nolan*, the evidence justifies findings showing that more than one category of knowledge can be proved Traffic Commissioners should feel free to make such findings, they are not compelled to select only one category of knowledge.

Effect of lack of caution and of acquittal considered – meaning of “reason to believe”  
[2003/309 B Smith](#)

If the T C decides that the facts of a claim for the return of an impounded vehicle mean that one or more of the five categories of knowledge set out above could be relevant it is essential that findings of fact are made in relation to all the factors relevant to prove that category, (or those categories), of knowledge.

[T/2013/21 Societe Generale Equipment Finance Ltd v VOSA](#) (paragraphs 13 & 14)

In a case of category (iii) knowledge the 'route to a decision' set out at paragraph 14 of *Societe Generale* sets out the relevant questions. These should be appropriately adapted in cases involving category (ii), (iv) or (v) knowledge. In the case of the last two categories an additional question must be added to cover the requirement for a finding, in those categories, that the applicant was acting dishonestly or with a dishonest motive.

There is no legal requirement that a Finance Company must make inquiries either before or after entering into any transaction relating to an HGV or PSV. Any decision based on the existence of such a requirement is likely to be set aside on appeal on the basis that it is 'wrong in law'. Whether or not the honest and reasonable man, (including a Finance Company), would or would not have made an inquiry is a question of fact to be determined according to the circumstances proved by the evidence in each individual case. If the honest and reasonable man would have made an inquiry in a particular case the nature and extent of the inquiry is also a question of fact to be determined on the evidence in that case.

[T/2013/21 Societe Generale Equipment Finance Ltd v VOSA](#) (paragraphs 15 & 17)

When deciding whether an honest and reasonable man would have made an inquiry and, if so, what inquiry would have been made TCs are entitled to take into account that we are all, (including Finance Companies), taken to know the law, (see paragraph 16 of *Societe Generale*). They are entitled to take into account that there is no legal requirement for a Finance Company to make inquiries, (see paragraphs 17 & 18 of *Societe Generale*). They are also entitled to take into account evidence that a Finance Company has or has not followed the guidance issued by a trade body to which the Finance Company belongs, (see paragraph 19 of *Societe Generale*). These are not decisive considerations, in the sense that on their own they determine the result, they must be weighed with any other relevant considerations. On the other hand clear evidence that the applicant was put on notice that the impounded vehicle was being used in contravention of the 1981 or 1995 Acts is likely to be a decisive consideration, (see paragraph 21 of *Societe Generale*).

[T/2020/09 Paccar Financial Polska Sp. Zo.O](#) (paras.19-20)

An owner's approach to impounded vehicles is relevant to knowledge. The Upper Tribunal said (paragraph 20):

"In our view, in principle, it can be said that if a company or individual has a policy which suggests a reckless or cavalier approach to the return of vehicles to offending clients then that is capable of informing as to what the relevant state of mind might have been as at the time a vehicle was seized. It might, for example, be capable at least with other evidence of indicating the likelihood of wilfulness (with respect to shutting eyes to the obvious) or a high degree of fault. We conclude, therefore, that the TC was not precluded from taking into account his view as to the general approach of the appellant with respect to the return of vehicles, which is all he was really doing, as an indicator of the state of mind of the appellant as at the time of impounding. The TC did not, therefore, err in law by taking into account an irrelevant factor."

## 8. Ground 4

Ground 4 is not confined to third party owners but may be used by any owner/operator who can satisfy the statutory requirements, though both sub-paragraphs 4(3)(d)(i) and (ii) must be satisfied.

[T/2016/08 Van Der Gaag Transport De Lier BV v DVSA](#) (see paragraphs 35-37).

In [T/2016/08 Van Der Gaag Transport De Lier BV v DVSA](#) (see paragraph 37) the Tribunal pointed out that the use of “and” between limbs (i) and (ii) means that an Applicant relying on this ground for the return of a vehicle must show that both limbs of Regulation 4(3)(d) have been satisfied. The Tribunal then considered the meaning of the word “steps” and said:

*“... when considering how “steps” should be interpreted the Tribunal is entitled to take a purposive approach. In making an application under paragraph 4(3)(d) the owner is accepting that criminal offences have been committed. We do not accept that in those circumstances owners should be allowed some ‘latitude’ in how they approach the steps they should take to prevent criminal offending from taking place, whether in the context of a free market or in the context of a large organisation with governance issues as was suggested by Mr Clarke. In view of the pre-condition in the sub-paragraph that owners accept that criminal offending has taken place we are satisfied that “steps” means all reasonable steps available to the owner. To put it another way, all those steps that a reasonable owner would take in the circumstances they find themselves in not only in the context of preventing past unlawful use but future unlawful use. Each case will turn upon its own facts but we should make it clear that the hurdle is a high one in cases where the applicant is an owner/operator because they must demonstrate the steps they have taken to prevent themselves from committing criminal offences. ‘Users’ of vehicles control the vehicles, they are responsible for the scheduling of the journeys the vehicles undertake and they manage and control the staff who plan or schedule those journeys. Ultimately it is within the power and control of owner/operators to stop unlawful operation if they so wish and those who do so wish should be able to demonstrate robust systems and procedures that they have put in place which would constitute reasonable steps within the meaning of sub-paragraphs (d)(i) and (ii) along with adequate explanations as to why those steps did not work in the instant case”.*

At paragraph 38 the Tribunal went on to provide examples of the kind of documentary evidence, (translated if necessary) that an owner/operator should be able to produce. The Tribunal stressed that the list was not intended to be exhaustive but that it aimed to provide some guidance as to the type of evidence that the Tribunal would expect to see on an application for the return of a vehicle on the ground set out in paragraph 4(3)(d). The Tribunal went on to say:

*“In view of the fact that the impounding provisions are designed to prevent criminal offending, we are not satisfied that in the case of a company, oral evidence alone (however credible the TC may find it to be) will be sufficient under paragraph 4(3)(d) because one of the tasks of the TC will be to consider the efficacy of the steps relied upon by the applicant”.*

The Tribunal pointed out, by way of one example, that oral evidence to the effect that training had been given might not be enough because perusal of the training material might reveal that the training itself was inadequate. It went on to give other examples.



## 9. Hearings

If the person applying for the return of an impounded vehicle requests a hearing or the Traffic Commissioner decides that it would be appropriate to hold a hearing Regulation 11(1) of the 2001 Regulations provides that: *“the Traffic Commissioner shall hold a hearing within 28 days of receipt of the application”*. However this is subject to the power to extend time under Regulation 23. Regulation 12 imposes a mandatory requirement to give a written decision and mandatory time limits within which it must be given, again subject to the power to grant an extension under Regulation 23. What happens if the time limits are not met and no extension of time is granted? This was considered in:

### [T/2012/18 & T/2012/19 Smith & Graham v VOSA & the Department of Transport](#)

The Tribunal decided that the Traffic Commissioner retained jurisdiction notwithstanding the failure to comply with the mandatory time limits. It pointed out that the Traffic Commissioner only had power to order the return of an impounded vehicle under Regulation 14. In other words if the TC has no jurisdiction to act under the Regulations the impounded vehicle will remain in the possession of VOSA unless and until the owner is successful in civil proceedings to order its return. However owners will need to consider, before embarking on such proceedings, whether VOSA will succeed on the ground that they had the right to impound so that they have not acted unlawfully or wrongly.

The practical consequences of non-compliance with the time limits were considered by the Tribunal in paragraph 23. In view of those consequences it is to be hoped that this situation will not arise again.

### [T/2013/37 UK London Skip Hire Barking Ltd](#)

Even if the owner does not request a hearing the T C should not proceed to deal with the application on paper without first considering whether a hearing is necessary to meet the interests of justice. (See paragraphs 13-18 of London Skip Hire).

## 10. Burden of Proof

Once the TC has considered the question of whether the person applying has the right to apply for the return of an impounded vehicle it is for VOSA to show that they were entitled to impound the vehicle. The burden of proof then shifts to the applicant who must prove one or more of the statutory grounds for return.

### [T/2013/56 Bradley Fold Travel Ltd & Peter Wright](#)

At paragraph 104 the Tribunal said:

*“The regime and the TC’s jurisdiction is clear: all that needs to be established by VOSA is that the authorised person had reason to believe that a vehicle is or was being used contrary to s. 12(1) of the 1981 Act. Once that is established then the burden shifts to the applicant to establish one of the grounds set out in regulation 10(3) and sub-paragraph (b) clearly places the burden on the applicant to establish “lawful use” rather than VOSA having to establish “unlawful use”. There is no requirement for unlawful use to be established by a conviction prior to an impounding hearing taking place”.*

Burden of proof on owner – reg.10(4)(c) of 2001 Regs considered  
[2002/56 J Tote](#) (paragraph 4)



[2005/259 RJ Evans](#) (paragraph 4, for Appellant to prove ownership)  
[2005/385 K Grant](#) (paragraph 7)  
[2007/62 Thomas McKinney](#) (paragraph 7)

Proof of ownership necessary

[2005/218 B Menear](#) (paragraphs 4 & 5)  
[2005/231 HSBC Equipment Finance \(UK\)](#) (paragraphs 4 & 5)  
[2005/565 Construction Access UK Ltd](#) (paragraph 4)

## 11. General

[Asset 2 Asset Ltd](#) (para 21)

- (i) Impounding is not a penal provision.
- (ii) The purpose of the regulations is to prevent owners knowingly permitting or facilitating the unlawful use of their vehicles. With that in mind a purposive interpretation of the regulations is to be preferred.
- (iii) While an owner is not required to make 'all reasonable inquiries' this does not mean that they are excused from making 'any reasonable inquiries'.
- (iv) A specific finding of dishonesty is not required in cases coming within categories (ii) or (iii) in relation to knowledge (as to which see above), 2011/21 Lombard North Central PLC not followed.
- (v) The law relating to impounding is the same in both HGV and PSV cases. Decisions relating to the one are equally applicable to the other, (para 22). Even apparently simple and straightforward impounding cases can give rise to some of the most difficult decisions that TCs are called upon to make. The importance of considering the need for representation, thorough preparation and full evidence was stressed in:  
[T/2012/37 F & M Refrigerated Transport Ltd](#) (at paragraph 17)

## 12. Approach

(i) The impounding of different vehicles on different occasions can be considered together providing that there is a sufficient connection between them

[T/2010/044 AJ Long Services](#)

(ii) However where that is done separate findings must be made in relation to each vehicle

[Nolan Transport v VOSA & Secretary of State for Transport T/2011/60](#)

(see paragraph 124)

(iii) Notwithstanding this requirement a finding in relation to one vehicle can be taken into account in relation to another vehicle provided that it is relevant to an issue in relation to that vehicle

[Nolan Transport v VOSA & Secretary of State for Transport T/2011/60](#)

(see paragraph 125)

(iv) When considering a claim for return on the basis that the owner had no knowledge of use in contravention of s. 2 of the 1995 Act Traffic Commissioners are not confined to making findings on one category of knowledge. They should make findings on all relevant categories.

[Nolan Transport v VOSA & Secretary of State for Transport T/2011/60](#)

(see the Tribunal's approach to the assessment of the facts at paragraphs 188-218)

### 13. Procedure

Procedure before TC considered

[2005/449 WJ Furber](#)

Refusal on paper – no hearing – need for reasons

[2005/542 J Thorogood](#)

Hearing before Tribunal is not a rehearing – exemption relating to carriage of goods for purposes of examination under para.29 of Schedule 3 of 1995 GVLO Regs considered – tractor unit is a “goods vehicle” and the hauling of an unladen trailer is “carriage of goods” – misdirection on knowledge of owner

[2002/134 WC Commercials](#) (paragraph 5)

No residual discretion – impounding is not disproportionate

[2004/152 F Meager](#) (paragraph 6)

(see also [2003/139 WC Commercials](#) at paragraph 4)

(see also comments by CA in *Anglo Rom* case in [Chapter 17 – Appeals from Tribunal](#))

See also [Nolan Transport v VOSA & Secretary of State for Transport T/2011/60](#) (paragraphs 232-273) where the matter was considered in detail after full argument

- (i) The impounding regime is a well-balanced and carefully crafted scheme. If properly operated it offers the owner of an impounded vehicle the opportunity to challenge the decision to impound and the opportunity to claim the return of the vehicle on four different grounds. No further element of ‘discretion’ or ‘proportionality’ is required nor should such elements be ‘read into’ the scheme.
- (ii) Paragraph 263 in the Nolan decision refers to Section 48 of a VOSA document which sets out their policy on ‘Deciding who to Impound’. The safeguards that resulted from compliance with this policy were one of the
- (iii) factors, which helped to persuade the Tribunal that no further element of discretion or proportionality was required.

See also [T/2016/28 Bolle Materieel BV v DVSA](#) (paras 38-39)

Period of 21 days allowed for making application to return vehicle is directory not mandatory – technical approach to documents to be avoided – amendment of name of owner considered

[2003/90 CPT Commercials](#) (paragraph 8)

[2005/471 Excel A-Rate Business Services](#) paragraphs 5-13)

[2007/414 Barclays Asset & Sales Finance](#) (23 weeks too long)

## 14. Miscellaneous points

Power to stop vehicle considered

[2003/262 GW Elliot](#)

Meaning of “contents”

[2007/75 MJ Cooney](#) (attached HIAB crane not returnable)

Wording on application form misleading

[2005/464 Secure Transport & Trading](#)

Test Purchases

[T/2013/56 Bradley Fold Travel Ltd & Peter Wright](#)

At paragraph 95 the Tribunal said:

*“We are satisfied that the procedure of “test purchases” when used to target the operation of PSV’s without an operator’s licence is reasonable and lawful if undertaken with the usual checks and balances described by Ms Hicks”.*

## 15. Exemptions

Legal status of “recovery vehicle” considered

[2008/11 Ansva Holdings](#) (paragraphs 11 & 12)

[2003/286 KW Richards](#) (paragraph 2(viii))

Exemption of vehicles with ‘fitted equipment’ where the ‘only other goods or burden carried are required for use in connection with the fitted equipment’.

[2009/023 Howard Collins](#)

“The important words are these: ‘the only other goods or burden carried are required for use in connection with the fitted equipment’. The underlining of ‘only’ and ‘required’ is ours because those words stress the two points, which need to be made in relation to this passage. First, the ‘other goods or burden’, (ie everything in addition to the equipment fitted) must be carried because it is ‘required’, in connection with the fitted equipment. Typically that would mean that the other goods or burden were carried because they were needed to make the equipment fitted work. Second, the expression ‘the only other goods or burden’ means that if the vehicle carries a mixed load, only part of which is required for use in connection with the fitted equipment, then it is not exempt”.

## Chapter 19 Decisions and Reasons

For the approach to regulation generally and proportionality see the Thomas Muir and Crompton cases in [Chapter 22 Appeals from Tribunal](#)

### 1. Senior Traffic Commissioner's Statutory Guidance

On "The principles of decision making & the concept of proportionality" can be found at:

<https://www.gov.uk/government/publications/traffic-commissioners-the-principles-of-decision-making-and-the-concept-of-proportionality-november-2018>

On "Format of decisions" can be found at:

<https://www.gov.uk/government/publications/traffic-commissioners-format-of-decisions-november-2018>

### 2. Proportionality

Approach to proportionality considered

[2002/217 Bryan Haulage \(No.2\)](#)

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

(For fuller quotation see [Chapter 16 Transport Tribunal Approach and Procedure](#);

for Crompton case see [Chapter 17 Appeals from Tribunal](#))

A preliminary question may be helpful

[2009/225 Priority Freight](#)

"The third point taken by Mr. Laprell was that the Traffic Commissioner gave no reasons for concluding that 'the conduct was such that the Appellant company ought to be put out of business'. There will be cases where it is only necessary to set out the conduct in question to make it apparent that the operator ought to be put out of business. We are quite satisfied that this was not such a case. On the contrary this was a case which called for a careful assessment of the weight to be given to all the various competing factors. In our view before answering the 'Bryan Haulage question' it will often be helpful to pose a preliminary question, namely: how likely is it that this operator will, in future, operate in compliance with the operator's licensing regime? If the evidence demonstrates that it is unlikely then that will, of course, tend to support a conclusion that the operator ought to be put out of business. If the evidence demonstrates that the operator is very likely to be compliant in the

future then that conclusion may indicate that it is not a case where the operator ought to be put out of business. We recognise, of course, that promises are easily made, perhaps all the more so in response to the pressures of a Public Inquiry. What matters is whether those promises will be kept. In the present case the Appellant company was entitled to rely on that old saying that 'actions speak louder than words'."

But in relation to applications, as opposed to regulatory action see:

[T/2010/049 Aspey Trucks](#)

### 3. Adequacy of Reasons

Reasoning must be set out – TC may not proceed from narrative of evidence to conclusions without assessing effect of evidence – but concise reasons may be sufficient

[2007/459 KDL European](#) (cases reviewed and references to [South Bucks](#) case in HL made)

see also: [2008/130 Lorna Eddie](#) where at paragraph 9 the Tribunal said this:

"It is usual for operators to appeal the decisions of Traffic Commissioners either wholly or partly upon the basis that their reasons were inadequate with reliance being placed upon the Transport Tribunal's decision [2002/1 Bryan Haulage \(No.1\)](#). The importance of that decision should not be overstated. Traffic Commissioners do not need to rehearse in their decisions, the entirety of the evidence that has been put before them, neither do they have to repeat and determine every point that has been raised, only those which go to the principal issues in the case. An appeal based on inadequacy of reasoning will not succeed unless it can be shown that the operator has been genuinely and substantially prejudiced by the failure to provide an adequately reasoned decision".

[2000/57 Yorkshire Rider](#) & [2000/62 First Bristol Buses](#) The quotation which follows is taken from that part of the decision which determined the appeal of First Bristol Buses.

"We have to say that the Traffic Commissioner does not give any analysis of his reasoning at all. He sets out what has occurred at the public inquiry and says that he has taken everything into account. But he then goes directly into his conclusions. What weight did he attach to the monitors' evidence? To what extent did he accept their conclusions? What did he make of Mr Buchanan's warnings about the unreliability of the sampling? What about traffic conditions in Bristol itself? There was overwhelming evidence to the effect that traffic congestion in the city is particularly bad: did he accept that it was a special case? We recognise the difficulties that the Traffic Commissioner faced but think that some analysis was necessary in the light of the evidence which was presented to him. In reality, all these matters were left in the air. We think that the details mentioned needed to be considered by him and that if they had been they would have driven him inexorably to the conclusion that a case for finding a failure to operate a local service was unsustainable, and outside the ambit of reasonableness. The effect of this is that the finding itself, the attachment of the condition and the determination under s.111 of the Act must all be set aside."

see also [2002/1 Bryan Haulage \(No.1\)](#) (paragraph 6)

[2007/104 S Lloyd](#) (paragraphs 7-10)

[2009/008 Severn Valley Transport](#)

"The one criticism we have of the decision is that it was given at the end of the public inquiry without a written decision being produced subsequently. This Tribunal has previously stated that when an operator's licence is to be revoked, a written decision should accompany or follow any oral determination. It is only after the full documentation has been thoroughly read, that there can be any understanding of why the Traffic Commissioner reached his decision in this case. Decisions should contain sufficient detail to allow a person with experience of the haulage industry to understand the basis upon which the decision was arrived at. Having said that, this was such a bad case that the Appellant could not have failed to understand why the Traffic Commissioner came to the conclusions that he did".

[2009/030 Pilkingtons Accrington](#)

The only record of the decision was in an internal minute. The Traffic Commissioner took the view that it ought not to have been disclosed. The Tribunal disagreed, on the basis that the Appellant was entitled to know the reasons for refusing the application and whether or not the correct test had been applied.

Where written reasons are promised to supplement an oral decision, they should be provided before the 28 day period for appealing has expired.

– [Surrey County Council v. Paul Williams \(T/a Garden Materials Landscaping\) and Secretary of State for Transport](#) [2003] EWCA Civ 599 (28

At paragraph 24 Laws LJ said:-

"I would merely endorse, as for his part did the Secretary of State in the skeleton argument prepared by counsel on his behalf, what was said by the tribunal at paragraph 3 of the decision:

<sup>[17]</sup><sub>SEP</sub> It is regrettable that the statement of reasons in this case was not provided before the expiry of the 28 day period for the lodging of an appeal and it is clearly desirable that all objectors should receive the statement of reasons as soon as is possible within the 28 day period to avoid allegations that the Traffic Commissioner has tailored his/her reasons to meet the grounds of appeal'."

"What matters most is what the Traffic Commissioner thinks and why he thinks it"

[2010/71 Eurofast \(Europe\) Ltd](#)

An applicant for a licence, whose application has been refused, is entitled to know which of the statutory criteria have not been met and why. Where a TC relies on the cumulative effect of a number of factors it is necessary to show how one fact strengthens another and why that means that one or more of the statutory criteria have not been met

[T/2012/68 Peter Nicholas Wenzel Priedel t/a Sandwich Statics](#) (paragraph 7)

It is for the TC to decide whether or not to give a written decision. Whether or not a decision is oral or in writing it must be properly structured and provide sufficient intelligible reasons for the conclusion reached.

[T/2013/80 Graham William Smith t/a Smiths Coaches](#)

Paragraphs 8-27 of [T/2015/68 Malcolm George Millard t/a M&M Haulage](#) set out a comprehensive summary of earlier Tribunal decisions in relation to adequacy of reasoning. In addition reference is made to decisions on this topic in other jurisdictions. See also [T/2016/03 Ian Lambert t/a IKL Transport](#) (paragraphs 11-27) and [T/2015/72 Rose Transport Ltd, Jacqueline Walters and Gilchrist Walters](#) (paragraph 19-49).



The Upper Tribunal in [UA-2021-000326-NT RJ Rutledge Ltd](#) reviewed and endorsed recent Tribunal decisions that the duty to give full reasons is a fundamental requirement of natural justice and procedural fairness.

Inadequate explanation of the TC's decision in OTC decision letters

[T/2018/36 Wajid Bashir t/a MB Travel](#) (paragraphs 9 and 12)

[T/2018/44 Sheraz Asghar](#) (paragraphs 15-16)

[T/2018/23 Camiers Group Ltd](#) (paragraphs 7-9)

[T/2018/49 Kuldip Chahal t/a Toon Party Bus](#) (paragraphs 35-37)

[T/2020/64 Manzoor Hussain Shah](#) (paragraph 15)

[UA-2021-000019-T Nico 2014 Limited](#) (paragraphs 7 and 13-15)

[UA-2021-002173-T ALPS Scaffolding Ltd](#) (paragraphs 19 and 47)

[UA-2022-00361-T Mohammed Assan Momin](#) (paragraph 18)

A reasoned explanation for the exercise of a discretion not to hold a hearing was required

[UA-2021-000023-T Van Duijn Fleet BF and Transportbedrijf van Duijn en ZN.Bv](#)

Rather, we take the view that there was some ambiguity as to precisely what it was that the first appellant was asserting as to the basis for the return of the vehicle. Further, there was, as is often the case where impounding decisions are challenged and return of the vehicle is sought, an issue regarding an asset of some value. In those circumstances, whilst we are very far from concluding that the TC was obliged to direct a PI, we are satisfied that a consideration as to whether she should exercise her discretion to direct one was called for. That being so, we are of the view that a reasoned explanation for the exercise of discretion not to hold a hearing was required.

#### 4. Findings of Fact – Balancing Exercise

In [T/2010/052&053 S A Taylor and M Taylor](#) at paragraph 7 the Tribunal said:

*“There are three main ingredients in a properly conducted balancing exercise. First, the identification of all the relevant factors. Second, an assessment of each factor and third, the conclusion, which must explain why one factor or group of factors outweighs another or others and so provide justification for the conclusion reached. We have used the word ‘ingredients’ rather than refer to three ‘stages’ because we are conscious of the fact that on occasions one ingredient may overlap into another. For example in explaining why a factor is relevant it may be necessary to make some assessment of that factor. Subject to that there will be cases where it is sensible to treat the three ingredients as separate stages”.*

At paragraphs 8-10 the Tribunal went on to consider how TCs should apply this guidance.

In [T/2014/72 Ian Russell Nicholas t/a Wigan Container Services v Secretary of State for Transport](#) the TC said, under the heading ‘Key findings of fact and balancing exercise’ that she had: *“conducted the necessary balancing act and in doing so I have considered the relevant key facts”*. The Tribunal commented at paragraphs 41 & 42:-

*“In our view it is unsatisfactory and potentially unfair to combine the tasks of setting out findings of fact and conducting a balancing exercise. It is unsatisfactory because the two tasks involve different considerations. In our view they should be approached separately, with findings of fact being made first and the balancing exercise being undertaken after the facts have been found. It is potentially unfair because findings of fact, particularly where the evidence is disputed, will more often than not, be unfavourable to the operator.*

*That was certainly the case here as the Traffic Commissioner expressly acknowledged in the next paragraph, (paragraph 58), where she said: “I regard all of the above as aggravating features”. To the extent that we have not disagreed with them we would accept that description.*

*The Tribunal has stated on several occasions that simply stating that: “I have conducted the necessary balancing act” will not do. The Appellant is entitled to know and, if there is an appeal, the Tribunal must be able to see, what factors have or have not been taken into account. In addition both the Appellant and the Tribunal are entitled to know, in general terms, why one set of factors outweighed the other. We accept at once that this is not something that can be done with mathematical precision but it is something which must be done in general terms. In some cases it may involve stating the obvious, in others the factors will be more evenly balanced, in which case the task of explaining why one outweighs the other is all the more important”.*

Having identified a number of favourable factors which had not been mentioned the Tribunal went on the add, at paragraph 44:-

*“It may be that the Traffic Commissioner felt that many of these factors were not favourable factors because they simply involved the Appellant doing what he was required to do in order to comply with the regulatory regime. If this accurately reflects the Traffic Commissioner’s thinking we question whether it is the correct approach. We do so for two reasons. First, the extent to which the Appellant was capable of operating compliantly was clearly relevant to what is often called the Priority Freight question, namely: ‘how likely is it that this operator will, in future, operate in compliance with the operator’s licensing regime?’ (See: [2009/225 Priority Freight](#).) Second these, in our view, were matters that were relevant to the questions of whether to disqualify the Appellant and, if so, for how long. In our view these were relevant factors and they ought to have been taken into account. The fact that they simply demonstrated compliant operation is something that can be taken into account in deciding how much weight they should be given”.*

Paragraphs 48-71 of [T/2015/39 Firstline International Ltd & William Lambie v Secretary of State for Transport](#) provide an excellent example of the assessment of evidence.

## **5. Miscellaneous points**

Impounding – TC refused return without a hearing – need for reasons – comments of House of Lords in [South Bucks DC v. Porter \(No.2\)](#) (2004 1 WLR 1953 @ 1964 HL) quoted [2005/542 J Thorogood](#)

TC wrong to defer decision and to make it dependent on untested maintenance report [2006/134 Recycled Waste Transport](#)

TC wrong to rely on stale evidence and to ignore recent improvements [2006/149 A & C Nowell](#) (paragraph 12)

Steps which can be taken where a PI has to be delayed until criminal proceedings have been concluded, see paragraph 6 of: [2006/149 A & C Nowell](#)

Revocation ordered although operations in question were “very small part of overall operations” – no proper balancing exercise (note: this would now be held to have been “disproportionate”)

[2000/16 Group Taxibus](#)

TC stated that he intended to leave issue of financial standing to one side while considered other matters but then made adverse findings on it in decision without having invited evidence or submissions

[2001/11 Pagoda Travel](#)

(see also [2006/111 Kent Coach Travel](#)) (paragraph 11)

A phrase such as “one last chance” does not in itself fetter a TC’s discretion. Repute (and other requirements) must be judged as at date of Public Inquiry

[2001/49 Norbert Dentressangle](#)

Failure to balance and explain favourable result in linked PI

[2008/472 K Scott](#)

TC wrong to blame operator for failure to volunteer information when operator acting on legal advice and advocate present

[2002/22 S Garforth](#)

Lies told by one brother do not necessarily implicate the other – reasoning must be properly set out

[2001/45 D Crompton](#)

Following a decision to grant an application a written statement of reasons under reg.22 of the 1995 GVLO Regs should be sent promptly to objectors

[2001/56 Surrey CC v. P Williams](#) – see [Chapter 17 Appeals from Tribunal](#)

Effect of findings by TC at earlier PI considered

[2003/132 JB Hoggar](#)

Decision that “a deliberate attempt to circumvent” earlier revocation made without a hearing or any proper evidential basis

[2002/125 Bellfield Transport](#)

Notice must have been given of allegation on which TC proposes to act

[2000/42 AJ Cassells](#)

[2006/457 Rex Haulage](#) (unauthorised use of operating centre)

Details of decision may be corrected by TC

[2001/77 Wilton Contracts](#)

Procedural flaw in decision – TC revoked license on grounds that were not identified in the calling in letter or in the brief for the Public inquiry (the case summary).

[UA-2021-000040-T Ram Logistics Ltd:](#)

“The TC failed to identify in advance the grounds and evidence on which she sought to rely upon against the Appellant. This significantly prejudiced the Appellant which was not properly informed of the case it had to meet at the PI and was deprived of the opportunity to understand the case it had to meet in rebuttal” (paragraph 33).

UT set aside the TC decision to revoke as the precise basis for the decision was unclear: “in a case where it has been decided to revoke a licence, the specific statutory authority which is being relied upon has to be specified with clarity”

[T/2021/25 \(1\) MBB Stans Ltd \(2\) Przemyslaw Zalecki](#)

The intention was to revoke on the basis of repute and change of circumstances but the decision letter made no reference to repute. The Tribunal proceeded on the basis the sole reason for the revocation decision was the change of circumstances

[UA-2022-001228-T Nadeem Iqball Butt t/a Communitywide Travel Services](#)

Submission of evidence after determination to revoke but before revocation notified to operator (paragraphs 28-31). The Appellant submitted an incomplete application to appoint a new transport manager after the expiry of the period of grace and after the date of the TC's decision to revoke but before notice of it had been given to the operator. Tribunal held that although the decision did not have effect until notified, the limitation created by Schedule 4, para 17(3) of the Transport Act 1985 "is concerned to create a cut-off linked to when the determination is made, providing a form of protection against the underlying decision being undermined by changes after the decision-maker applied their mind to it and promoting administrative certainty. On this view, consideration of the post determination submission of Form TM1 would in any event be rule out." (paragraph 30).

[T/2020/72 Cambridge Removals & Storage Ltd](#)

Serious delay in giving decision deprecated

[2005/523 Swallow Coach Company](#) (delay nearly 8 months, see also paragraph 6)

[2006/351 Caledonian Coaches](#) (delay of 16 months see paragraph 5)

[2006/355 Ferguson Travel](#) (delay of 6 months but no prejudice, paragraph 16)

[NT/2017/16 Damien Toner](#) (delay of 6 months, paragraph 40-44)

No power to make interim orders without hearing operator

[2006/487 D & H Travel](#)

Expressions such as "phoenix operation" and "fronting" should be used with caution unless properly defined

[2011/23 Taj The Grocer Ltd](#)

[2011/34 Utopia Traction Ltd](#) (paras 8 & 9).

"We consider that Traffic Commissioners, (and the Tribunal), should, at some stage and preferably on the first occasion, explain what they mean when using shorthand expressions such as 'front' or 'fronting'. There are two reasons why this is necessary. First, while most people in the industry will know what the shorthand expression means, others, and those not in the industry, who may still have an interest in the case, may not know. Second, it is only by explaining what the expression is understood to mean that it is possible to assess whether the findings of fact which have been made support the conclusion that the use of the shorthand expression is justified".

"In the context of vehicle operator's licensing 'fronting' means that 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. In other words it deprives the Traffic Commissioner of the right to control an 'operator', when Parliament has said that such an entity should be within his or her jurisdiction".

This approach was followed in [T2012/71 Silvertree Transport Ltd](#), at paragraph 4 of that decision the Tribunal provided another description of 'fronting':

“Another way in which to describe the same situation would be to say that: ‘fronting’ occurs when appearances suggest that a vehicle, (or fleet), is being operated by the holder of an operators 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 operators 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”.

The Tribunal went on to explain that once a Traffic Commissioner is satisfied that the evidence establishes that ‘fronting’ has taken place he is entitled to take a serious view of such conduct, firstly because fronting involves deception and secondly because it is conduct which can seriously undermine the effectiveness of the regulatory regime.

[UA-2021-000465-T Liliana Manole](#)

The Tribunal found that the Deputy Traffic Commissioner was entitled to draw inferences from primary findings of fact and held that the appellant “should have been in no doubt what fronting meant and how seriously it was viewed and that as transport manager she should have been on high alert with regard to signs of fronting.” (paragraph 41). “The primary findings of fact were well made out and the inferences drawn from them are not open to criticism” (paragraph 42).

[UA-2022-000001-NT Derrymorgan Transport Ltd](#)

Inference from Appellant choosing not to give evidence – “it has long been a common law principle of evidence within civil proceedings that an inference may be drawn from a party’s failure to respond to an allegation or from a party’s failure to give evidence” (paragraph 30). The Tribunal continued that “in this case, it was within the remit of the applicant company director’s knowledge to be in a position to rebut the evidence of the DVA, and to provide proof that not only was this the applicant’s vehicle, but that it was being used by a legitimate Bulgarian haulage business. The Presiding Officer was therefore entitled to draw inferences from Mr Morgan’s silence, and for such inferences to be added to the evidence to be assessed in determining this matter.”

The TC’s failure to afford an operator an opportunity to make representations in relation to an environmental condition attached to an interim licence did not render the condition *void ab initio*. However, it is a relevant consideration in assessing seriousness of the breaches.

[T/2015/63 Mr & Mrs Smith](#) (para.43-45)

“Our decision is not to be read as diluting the importance of complying with interim licence conditions even if attached in contravention of section 23(4). And we stress the need for operators carefully to check interim licence conditions and, if they object to them, should apply to a traffic commissioner for their variation. However, the fact that an interim condition has been attached in contravention of section 23(4) is a relevant consideration when an operator faces enforcement action for failure to comply with the condition.”

Reliance on undisclosed material

[T/2017/38 J & K Environmental Services Ltd and Lialian Monole](#) (para.38):

“[Traffic] Commissioners should be very careful not to rely on information which is not disclosed to parties in good time for them to carry out their own research and to make representations. However, on the facts of this case, and in the absence of any request by a legally represented party for an adjournment, where the information is in the public domain and easily accessible, we cannot see that there was any significant breach of the rules of natural justice and fair procedure.”

Requiring audit from the FTA or RHA not anti-competitive  
[T/2019/71 Alan John Woolley trading as Dolphin Travel](#) (para.28)



## Chapter 20 Stays

### 1. Stay of Decisions by TC

The procedure for applying for a stay of a decision by a TC is governed by statute. In the case of Heavy Goods Vehicles the relevant provisions are set out in s. 29(2)&(3) of the 1995 Act. In the case of Public Service Vehicles the relevant provisions are set out in s. 50(6)-(8) of the 1981 Act.

Both these sections require that an application for a stay should be made to the TC. The jurisdiction of the Tribunal only arises if and when the TC has refused to grant a stay.

In a decision on a stay application in T/2019/3 IWMS Waste Collection Dot Com Ltd, the TC stated that a stay could not be granted in respect of a decision that takes effect immediately. The UT Judge considered this view was wrong. Whilst there were no legal argument or comments invited on the point, it is worthy of note that the UT routinely deals such applications and no such challenge had been raised previously.

Detailed guidance on the considerations to be taken into account when a TC or the Tribunal is invited to consider the grant of a stay was given in the ruling on an application by Ptarmigan Solutions Ltd t/a Bankfoot Buses (T/2009/513) in these terms:-

#### “Approach to applications to Stay Decisions

1. A number of factors need to be considered whenever an application for a stay is decided. The degree of relevance and the weight to be given to individual factors will vary from case to case and will depend on the circumstances of each individual case.
2. The starting point must be that there is an unfettered right to appeal decisions made by Traffic Commissioners, in the sense that permission to appeal is not required. In addition appeals are not limited to points of law. In other words the AAC is entitled to consider, for example, whether there was evidence to support a particular conclusion and whether an exercise of discretion has been shown to be unreasonable, in the sense that it was a decision which no reasonable Traffic Commissioner could have reached having correctly directed him or herself about the law and having properly assessed the evidence.
3. Where the licence has been revoked and, perhaps in some other situations, the refusal of a stay is likely to bring the operator’s business to an end before an appeal can be heard, even if the hearing is expedited. The prospects of a successful appeal, (a factor which is considered below), are very important when considering whether it is appropriate to run the risk of putting an Appellant out of business before it is possible for an appeal to be heard. Where an appeal is obviously not going to succeed an Appellant cannot expect to ‘postpone the inevitable’, by relying on his unfettered right to appeal, in a case where there are concerns sufficient to warrant refusing a stay. On the other hand where there appear to be arguable grounds of appeal it may be difficult to justify not granting a stay because refusal of a stay may effectively put the Appellant out of business before the matter can be tested on appeal.
4. The Transport Tribunal made it clear on many occasions that appeals from Traffic Commissioners do not involve a complete re-hearing of all the evidence. Instead such appeals involve a review of the material put before the Traffic Commissioner at the Public Inquiry and the conclusions, which he or she reached on the basis of that material. There is nothing to suggest that this approach should be changed following the transfer of the jurisdiction of the Transport Tribunal to the AAC. Indeed the statutory prohibition against taking into account, when hearing an appeal from a decision of a

Traffic Commissioner, “any circumstances which did not exist at the time of the determination which is the subject of the appeal”, was not altered by the legislation which transferred the Tribunal’s jurisdiction to the AAC, [see paragraph 9(2) of Schedule 4 to the Transport Act 1985, now paragraph 17(3) of the same schedule]. Because an appeal from a decision of a Traffic Commissioner concentrates on the question of whether the decision was justified on the material before the Traffic Commissioner the right to put forward new evidence, which was not before the Traffic Commissioner at the Public Inquiry, is limited. In the Transport Tribunal decision

[2002/40 Thames Materials](#), (see page 44 of the Digest), the Tribunal confirmed the position, consistently applied over many years, that fresh evidence could only be admitted if it passed the test for the admission of fresh evidence, laid down by the Court of Appeal, as long ago as 1954, in the case of *Ladd-v-Marshall*. In particular an Appellant has to show that “the evidence could not have been obtained, with reasonable diligence, for use at the Public Inquiry”. Any application for a stay, which is supported by new material, has to be considered with those matters in mind.

5. The Transport Tribunal frequently stressed that Traffic Commissioners have the advantage of seeing and hearing the witnesses, with the result that it is only in the clearest cases that the Tribunal or the AAC will differ from the Traffic Commissioner when it comes to assessing the credibility of a witness. In addition providing that there is evidence to support a particular conclusion it is for the Traffic Commissioner to decide what weight, if any, to give to that evidence. Grounds of appeal, which state expressly or by implication that the Traffic Commissioner gave too much or too little weight to a particular piece of evidence, have no prospect of success.
6. The test applied by the Transport Tribunal and the test, which will be applied to appeals to the AAC, is to consider whether the decision of the Traffic Commissioner was ‘plainly wrong’. This is particularly important in cases involving the exercise of discretion. It is not sufficient to seek to persuade the AAC that another Traffic Commissioner might have come to a different decision on the same material. The appeal will only succeed if it is shown that the decision was ‘plainly wrong’ in the sense that no reasonable Traffic Commissioner, properly considering the evidence and correctly applying the law, could have reached the same conclusion. That test needs to be considered whenever the prospects of success on an appeal fall to be considered.
7. In Public Service Vehicle cases the safety of the public in general and the safety of passengers in particular will be an important consideration when considering whether or not it is appropriate to grant a stay. (Similar considerations will apply in Heavy Goods Vehicle cases). A Traffic Commissioner, who has seen and heard the evidence, will be in a better position than a Judicial Member of the AAC, to assess the extent to which safety is likely to be compromised by granting a stay. If the Traffic Commissioner concludes that safety will be compromised to the point where a stay should be refused it will be important to provide a sufficient explanation to justify that conclusion.
8. The operator’s licensing system is built on trust. Traffic Commissioners must be able to trust operators to operate within the rules laid down by the licensing regime established by Parliament. Operators must be able to trust their competitors to comply with the regulatory regime. If it appears that an operator is able to flout the regime, without any adverse consequences, trust will break down and others will also feel compelled to flout the regime in order to avoid being put at a competitive disadvantage. It follows that fair competition and trust are also important considerations in deciding whether or not to grant a stay. Again the Traffic Commissioner will be in a better position than a Judicial Member of the AAC, to assess the extent to which fair competition is at risk and trust has been lost. Again if it is concluded that the risk to fair competition and/or the loss of trust justify refusing a stay it will be important for the Traffic Commissioner to provide a sufficient explanation to justify that conclusion.
9. The most important consideration of all involves an assessment of the prospects of a successful appeal. Appellants and their advisers should understand that anyone who is asked to stay a decision will consider the grounds of appeal with great care. If it is

clear that no grounds have been advanced which might lead to the conclusion that the Traffic Commissioner was plainly wrong then the conclusion will be that the appeal is

10. likely to fail. In those circumstances other factors, especially safety and fair competition, are likely to carry greater weight. On the other hand if it appears that there are arguable grounds of appeal then the risk that, if a stay is not granted, the Appellant will be deprived of his right of appeal should carry great weight. It is

important to remember that there will be cases where, if the appeal succeeds, the fact that it has succeeded will mean that the risk to safety or the threat to fair competition was not as great as had been feared.

11. In contrast to the assessment of safety, the risk to fair competition or loss of trust the Judicial Member of the AAC, dealing with an application for a stay, is likely to be in a better position to assess the prospects of success on an appeal than the Traffic Commissioner whose decision is being appealed. Where a novel point of law has been raised before a Traffic Commissioner it may be relatively easy to conclude that there are arguable grounds for appeal. But where an exercise of discretion is attacked it is much more difficult to expect the Traffic Commissioner, who has reached a considered decision which he or she genuinely believes to be correct, to stand back and say 'in the light of this ground of appeal perhaps, on reflection, I was wrong'. The Judge of the AAC, on the other hand, is in a position to take a detached and impartial view. In addition the Judge of the AAC may have the benefit of more detailed grounds of appeal and, if requested, a skeleton argument.
12. How should these factors be applied to individual cases? I understand that the practice adopted by Traffic Commissioners is to grant a stay, if requested to do so, unless they have concerns that road safety, the safety of passengers, fair competition or the proper observance of the regulatory regime, will be sufficiently seriously compromised that it is inappropriate to grant a stay. In my judgment this is the correct approach for a variety of reasons. It avoids the problem of the Traffic Commissioner having to assess the prospects of a successful appeal against a decision, which the Traffic Commissioner concerned will genuinely believe to be correct. It recognises that the Traffic Commissioner concerned will be in a better position than a Judge of the AAC to assess the reasons why a stay is being refused and to explain them. It also recognises that an Appellant who has been refused a stay by the Traffic Commissioner can apply, as of right, to a Judge of the AAC for a stay to be granted. The Judge dealing with such an application must give a decision within 14 days of the application being received. Where a decision is due to come into effect very shortly after a stay has been refused it will be appropriate for the Traffic Commissioner to consider whether to defer the coming into effect of his or her decision to enable a Judge of the AAC time to give the matter proper consideration. The almost inevitable result of the refusal of a stay and the refusal to defer the coming into effect of a decision, in that situation, will be the immediate grant of a short stay to preserve the existing position pending a decision on the merits of the application for a stay. A further reason for concluding that this is the correct approach is that providing there are no concerns about road safety, the safety of passengers, fair competition or the observance of the regulatory regime, it is difficult to see any justification for not granting a stay. In that situation there is no sufficiently compelling reason for putting the Appellant out of business before an appeal can be heard, even if the grounds of appeal appear to be weak.
13. A Judge of the AAC dealing with an application for a stay must, of course, give careful consideration to the reasons given by the Traffic Commissioner for refusing to grant a stay. In particular he or she must assess their validity and whether the concerns are sufficiently serious to justify the refusal of a stay. In addition it will be important for the Judge of the AAC to assess the grounds of appeal. If there are matters of sufficient gravity to justify the refusal of a stay, and there is no realistic prospect that the appeal will succeed, a stay will obviously be refused because the grant of a stay, in those circumstances, simply enables the Appellant to postpone the inevitable. On the other hand the more likely it is that an appeal will succeed the greater the justification required

if a stay is to be refused; otherwise there is a risk that the Appellant will be put out of business before a potentially successful appeal can be heard. This

14. consideration is all the more important in a case where a ground of appeal with reasonable prospects of success will, if it succeeds, allay the concerns about, for example road safety, where road safety has been the justification for the refusal of a stay

Further, on an application by Wendy Dina Kerr (T/2014/49), the Upper Tribunal Judge said (paragraphs 8-9):

“One of the factors that I must consider when deciding whether or not to grant a stay is the prospect of the appeal succeeding. The better the prospects of success the stronger the case for granting a stay. The worse the prospects of success the greater the weight that must be given to other factors, such as the impact on road safety, fair competition and compliance with the regulatory regime if a stay is granted. But these are not factors which can be considered in isolation because the better the prospects of success the less likely it is that road safety, fair competition or compliance with the regulatory regime will be put at risk. A third factor to consider is the impact of the decision on the viability of the operator’s business. If an appeal appears to be hopeless granting a stay simply postpones the inevitable and in that situation concerns about road safety, fair competition and compliance with the regulatory regime will carry great weight. On the other hand once an appeal raises an arguable point with reasonable prospects of success these concerns may be outweighed by the risk of serious damage to or the destruction of the Appellant’s business.

The starting point when considering the prospects of success is that an Appellant assumes the burden of showing that the decision under appeal is wrong. In order to succeed the Appellant must show that, on the material available to the Traffic Commissioner, the decision was plainly wrong. Alternatively, (and it applies the same standard), the Tribunal has to ask whether the process of reasoning and the application of the relevant law required the Traffic Commissioner to come to a different conclusion, see paragraphs 39 and 40 of the decision of the Court of Appeal in – Bradley Fold Travel Ltd & Peter Wright –v- Secretary of State for Transport [2010] EWCA Civ. 695. The word ‘required’ is underlined to stress the strictness of the test that the Tribunal must apply before allowing an appeal. In applying this test it must be remembered that the Deputy Traffic Commissioner had the advantage of seeing and hearing the witnesses. One consequence is that it was for the Deputy Traffic Commissioner to decide what, if any weight, to give to a particular piece of evidence. Another consequence is that that it is not open to the Upper Tribunal to overturn a finding of fact which the Deputy Traffic Commissioner, as a specialist fact finder, was entitled to make, just because others might reasonably take a different view of the same evidence, see appeal 2013/09 Sarah Boyes t/a Boyes Transport.”

One of the factors to be taken into account is the impact on the regulatory regime of granting or refusing a stay. See Chapter 12 Revocation, Suspension and Curtailment, and in particular the quotation from the decision in the appeal of T/2013/47 Dundee Plant Company Ltd.

## **2. Challenging a stay refusal decision by Upper Tribunal**

What is the proper course of challenge against a stay refusal decision by the Upper Tribunal? The appellants in T/2017/80 North Warwickshire Travel Limited made an application to the Administrative Court for permission to apply for judicial review of the Upper Tribunal’s decision to refuse a stay. Interim relief by way of a stay of the TC’s decision was granted by Yip J in an Order dated 5<sup>th</sup> December 2017. The Upper Tribunal expressed doubt in relation to whether the Administrative Court has jurisdiction – see paras.13-14 of T/2017/80 North Warwickshire Travel Limited. It

seems, the Administrative Court agrees. By Order dated 7 February 2018, Dove J refused permission and stated the following reasons:

“I am not satisfied that this court has jurisdiction to hear this claim. The proper course would have been for the claimant to have appealed the decision of the Upper Tribunal to the Court of Appeal since the decision under challenge is not an excluded decision under s.13 of the Tribunals, Courts and Enforcement Act 2007. It is most unfortunate that the claimant did not draw this issue in relation to jurisdiction to the attention of the court at the time of seeking interim relief and, for the avoidance of doubt, the order of Yip J dated 5<sup>th</sup> December is discharged.”

### **3. Stay of Tribunal Decisions**

The question of whether the Transport Tribunal had the power to stay one of its decisions, pending an appeal to the Court of Appeal, arose in the case of Anglorom (UK) Ltd and Paramount Kitchens Ltd. In that case the application for a stay was initially made to the Court of Appeal but the Lord Justice, who considered the application, directed that it should be considered, first, by the judicial member of the Tribunal who had presided over the appeal. When the matter returned it was fully argued. The following quotation from the ruling in an application for a stay by A 2 Z Travel (UK) Ltd provides a summary of the position in relation to applications to stay decisions of the Transport Tribunal pending an appeal to the Court of Appeal:

“The question of whether or not the Tribunal has power to stay one of its orders pending an appeal to the Court of Appeal was fully argued before another Judicial Member of the Tribunal, (Miss Jacqueline Beech, as she then was), when she decided the application for a stay made by Anglorom (UK) Ltd and Paramount Kitchens Ltd. I have had the advantage of considering a copy of that ruling, which is not reported nor does it feature on the Tribunal’s website. In summary the position is this. Paragraph 8(2)(c) of Schedule 4 to the Transport Act 1985 gives the Tribunal, in relation to the enforcement of its orders, ‘all such powers, rights and privileges as are vested in the High Court’. The case management powers vested in the High Court, by CPR Part 3.1 include a discretion to stay ‘the whole or part of any proceedings or judgment, either generally or until a specified date or event.’ In addition CPR Part 52.7 provides that ‘unless the appeal court or the lower court orders otherwise an appeal shall not operate as a stay of any order or decision of the lower court’.

The current position is similar in that under Rule 5(3)(l) of the Tribunal Procedure (Upper Tribunal) Rules 2008 the Tribunal has the power to:- “suspend the effect of its own decision pending an appeal or review of that decision”.

It follows that, in the first instance, an application to stay a decision pending an appeal to the Court of Appeal, should be made to the Tribunal and not to the Court of Appeal.

## Chapter 21 Tribunal Approach & Procedure

### 1. Grounds of Appeal

Given the approach which the Tribunal is required to adopt, (see below), generalised grounds of appeal do not assist and are to be discouraged

[T/2010/006 Fisher Tours](#)

“By way of a footnote, we have previously attempted to discourage legal representatives from lodging generalised grounds of appeal. In this appeal, paragraph 1 of the amended grounds read as follows:

*The Traffic Commissioner for Scotland in reaching her decision erred in fact and law, and misdirected herself in law by: misconstruing and failing to observe the requirements of the relevant statutory provision and regulations; taking into account irrelevant factors and leaving out of account relevant factors; applying the wrong tests in respect of local services and their provision; failing to have regard to the evidence before her; having regard to her own speculations and reaching a decision which no reasonable Commissioner, properly directing herself could have reached in all the circumstances and on the evidence before her;”*

Ground 2 was “*in addition to and without prejudice to the foregoing*” and pleaded acts of ultra vires, misdirections on the law, errors of law and of course bias on the part of the Traffic Commissioner. Such generalised grounds of appeal as that set out above, are of no assistance to the Tribunal in identifying the issues in an appeal and are to be discouraged.”

Grounds of appeal should be fully set out in notice of appeal – grounds on proforma basis are to be deprecated and may lead to adjournments

[2001/41 Tate Fuel Oils](#)

[2006/146 S Holt](#) (paragraph 4)

Grounds of appeal should be set out in separate numbered paragraphs. Bullet points should be avoided because they are liable to cause confusion and delay, see paragraph 6 of: [T/2014/50 Andrew Harris t/a Harris of Leicester](#)

Allegations of bias must be set out in notice of appeal and supported by affidavit – practice considered

[2004/426 EA Scaffolding](#)

A recent reminder that [2004/426 EA Scaffolding](#) remains good law and that the need to include allegations of bias in the grounds of appeal still applies can be found in [T/2014/77 Leedale Ltd](#) (at paragraph 83).

### 2. Right to Appeal

There is a right of appeal against decisions taken under the 1981 Act in the circumstances set out in s. 50.

There is a right of appeal against decisions taken under the 1995 Act in the circumstances set out in s. 37.

There is a right of appeal against decisions taken under the 2010 Act in the circumstances set out in s. 35.



"A bare decision to remove the access of an operator to the VOL [self-service] system is not appealable". [UA-2021-002165-T Connor Construction \(South West\) Ltd](#) at paragraph 19.

An Operator cannot appeal an undertaking freely given.

[UA-2021-000565-T Clayton Frances Jones t/a Street Buses](#) (at paragraph 17) and see also [UA-2021-002165-T Connor Construction \(South West\) Ltd](#) (paragraphs 17 – 19).

The powers of the UT in relation to appeals under any of these provisions are considered in detail at paragraph 6 below.

In an impounding case only those who were validly parties to the proceedings before the TC are given a right to appeal under Regulation 13 of the 2001 Regulations [T/2012/58 Alan Knight Transport B.V. & Alan Michael Knight](#) (paragraph 8)

### 3. Approach to Appeals

The following is a summary of the decision of the Court of Appeal in the case of [Bradley Fold Travel Ltd & Peter Wright –v- Secretary of State for Transport \[2010\] EWCA Civ. 695](#) (See also [Chapter 22 Appeals from Tribunal](#) where quotations from this decision will be found).

1. The Tribunal is not required to rehear all the evidence by conducting what would, in effect, be a new first instance hearing. Instead it has the duty to hear and determine matters of both fact and law on the basis of the material before the Traffic Commissioner but without having the benefit of seeing and hearing the witnesses.
2. The Appellant 'assumes the burden' of showing that the decision appealed from is wrong.
3. In order to succeed the Appellant must show not merely that there are grounds for *preferring* a different view but that there are objective grounds upon which the Tribunal ought to conclude that the different view is the right one. Put another way it is not enough that the Tribunal might *prefer* a different view; the Appellant must show that the process of reasoning and the application of the relevant law *require* the Tribunal to adopt a different view.

Earlier decisions of the Transport Tribunal and the Upper Tribunal must be considered in the light of this decision, though it confirms the approach taken in earlier appeals.

The correctness of the approach taken by the Court of Appeal in Bradley Fold is reinforced by the decision of the Supreme Court in the case of:

[Jones v First Tier Tribunal & Anor \(Rev 1\) \[2013\] UKSC 19](#) (see [T/2013/09 Sarah Boyes t/a Boyes Transport](#))

Whether TC plainly wrong – proportionality considered

2002/217 Bryan Haulage (No.2)

“This brings us to consider the approach to be adopted by the Tribunal in appeals from traffic commissioners. Until *the Crompton case* (David Crompton Haulage v. Dept of Transport (2003) EWCA Civ.64) the Tribunal only interfered with a traffic commissioner’s decision if it was shown to be “plainly wrong”. This approach was based on well-established principles and was referred to in *Appeal 1999 L29 A R\_Williams Properties Ltd* where we quoted from Lord Hoffman’s speech in *Piglowska v. Piglowski* (1999 1WLR 1360; 1999 3 All ER 632):

“In *G v. G (Minors: Custody Appeal)* [1985] 1 WLR 647, 651-652, this House, in the speech of Lord Fraser of Tullybelton, approved the following statement of principle by Asquith LJ in *Bellenden (formerly Satterthwaite) v. Satterthwaite* [1948] 1 All ER 343, 345, which concerned an order for maintenance for a divorced wife:

“It is, of course, not enough for the wife to establish that this court might, or would, have made a different order. We are here concerned with a judicial discretion, and it is of the essence of such a discretion that on the same evidence two different minds might reach widely different decisions without either being appealable. It is only where the decision exceeds the generous ambit within which reasonable disagreement is possible, and is, in fact, plainly wrong, that an appellate body is entitled to interfere.”

“This passage has been cited and approved many times but some of its implications need to be explained. First, the appellate court must bear in mind the advantage, which the first instance judge had in seeing the parties and the other witnesses. This is well understood on questions of credibility and findings of primary fact. But it goes further than that. It applies also to the judge’s evaluation of those facts. If I may quote what I said in *Biogen Inc. v. Medeva Ltd* [1997] RPC 1:-

“The need for appellate caution in reversing the trial judge’s evaluation of the facts is based upon much more solid grounds than professional courtesy. It is because specific findings of fact, even by the most meticulous judge, are inherently an incomplete statement of the impression, which was made upon him by the primary evidence. His expressed findings are always surrounded by a penumbra of imprecision as to emphasis, relative weight, minor qualification and nuance ..... of which time and language do not permit exact expression, but which may play an important part in the judge’s overall evaluation.”

“The second point follows from the first. The exigencies of daily courtroom life are such that reasons for judgment will always be capable of having been better expressed. This is particularly true of an unreserved judgment such as the judge gave in this case but also of a reserved judgment based upon notes, such as was given by the District Judge. These reasons should be read on the assumption that, unless he has demonstrated the contrary, the judge knew how he should perform his functions and which matters he should take into account. .... An appellate court should resist the temptation to subvert the principle that they should not substitute their own discretion for that of the judge by a narrow textual analysis which enables them to claim that he misdirected himself.”

“The decision in *the Crompton case* is dated 31 January 2003, which was nearly 4 months after the public inquiry in this case, and is of application both to traffic

commissioners and to the Tribunal itself. The leading judgment by Kennedy LJ restates the accepted position that both are public authorities for the purposes of s.6 of the Human Rights Act 1998. Accordingly they must act in ways compatible with Convention Rights and, so far as possible, read and give effect to domestic legislation in a manner which is compatible with such rights. The judgment goes on also to accept that an operator's licence is a possession for the purposes of Article 1 of the First Protocol, so that a person is not lightly to be deprived of it. The law is reviewed and the judgment continues by stating that although a licence "can be revoked lawfully in pursuit of a legitimate aim, ..... the action must be proportionate". It concludes by regarding as non-contentious the following proposition:-

"That if loss of repute is found the inevitable sanction is revocation, possibly followed by an application for a fresh licence which may or not be granted. There must therefore be a relationship of proportionality between the finding and the sanction, and that relationship has a direct bearing on the approach to be adopted in any set of circumstances to the question of whether or not the individual has lost his repute."

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

(For Crompton case see [Chapter 17 Appeals from Tribunal](#))

[2005/7 2 Travel Group](#) (at paragraph 14 the Tribunal considered the question of proportionality in relation to Financial Standing and Professional Competence).

Inquisitorial approach

[UA-2021-000523-NT NI Truck Rentals Ltd](#)

Tribunal noted that "one of the key characteristics of tribunal proceedings is its inquisitorial role. The inquisitorial role is different from the adversarial role adopted by many of the courts. It means that the tribunal can explore issues not raised by the appeal or by the parties or evidential issues relevant to the issues where it has formed the view that these evidential issues have not been explored in sufficient detail" (para 35).

#### 4. Citation of previous decisions

It is essential for advocates to restrict the citation of early decisions, whether to TCs or to the Tribunal, to those intended to provide guidance rather than those which turn on their own particular facts. In [2005/118 M & J Tinworth](#) the Tribunal said this at paragraph 5:

*"Anyone who intends to cite decisions of the Tribunal to a Traffic Commissioner or to the Tribunal must consider before doing so whether the passage on which they intend to rely sets out a principle of general application or whether it simply explains a decision made on the facts of*

*an individual case. A small number of the Tribunal's decisions fall into the first category, either because they provide guidance as to the true construction of a statutory provision, (for example [Appeal 9/2000 Stephenson & Turner](#)), or because they provide guidance as to the correct approach or the correct procedure, (for example [Appeal 2002/217 Bryan Haulage-v-Vehicle Inspectorate](#)). The majority of the Tribunal's decisions fall into the second category and even where a case sets out a principle of general application there may, nevertheless, be other aspects of the decision which turn on the particular facts of that case. There is no point in citing decisions, which turn on the facts of a particular case unless it can be shown that in every material respect the facts of the later case correspond with those of the earlier case. Indeed the inappropriate resort to earlier decisions may simply serve to expose the weakness of a case rather than providing strength".*

## 5. Withdrawal of an Appeal

Save for an appeal against a penalty imposed under s.39 Transport (Scotland) Act 2001 Rule 28(1) of the Transport Tribunal Rules 2000 no longer applies. Instead the withdrawal of an appeal is governed by Rule 17(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008. That rule provides that a party has the right to give notice of the withdrawal of an appeal, or any part of it, either in writing or orally at the hearing, but that the notice will not take effect unless the Upper Tribunal consents.

[T/2015/Cornwall Busways Ltd](#) (paras 4 & 5)

## 6. Tribunal's powers

These are now set out in paragraphs 17(1), (2) & (3) of Schedule 4 to the Transport Act 1985, as amended. These paragraphs replace paragraph 9 of Schedule 4. The powers set out in paragraphs 9(1) & (2) are identical to those now set out in paragraphs 17(2) & (3). Paragraph 17 provides as follows:

"(1) The .... Upper Tribunal are to have full jurisdiction to hear and determine all matters (whether of law or of fact) for the purpose of the exercise of their functions under an enactment relating to transport.

(2) On an appeal from any determination of a traffic commissioner other than an excluded determination, the Upper Tribunal is to have power-

- (a) to make such order as it thinks fit; or
- (b) to remit the matter to the traffic commissioner for rehearing and determination by the commissioner in any case where the tribunal considers it appropriate.

(3) The Upper Tribunal may not on any such appeal take into consideration any circumstances which did not exist at the time of the determination which is the subject of the appeal".

- (i) Paragraph 17(1)

The suggestion at paragraph 14 of [T/2015/55 PWT Contracts Ltd](#) that the right of appeal to the UT is confined to points of law, as a result of s. 11(1) of the

Tribunals Courts and Enforcement Act 2007 is wrong because s. 11(1) only applies to appeals from the FtT, which does not include TCs. Paragraph 17(1) of Schedule 4 to the Transport Act 1985 makes it quite clear that the UT has full jurisdiction to determine matters of both law and fact.

(ii) Paragraph 17(2)

Before remitting a case for rehearing and determination by the TC the Tribunal must consider whether or not it is “appropriate” to take that course. Unless and until it is satisfied that remitting the matter is the appropriate course the Tribunal should ‘make such order as it thinks fit’.

[Nolan Transport v VOSA & Secretary of State for Transport T/2011/60](#) (at paragraphs 104 & 132)

Tribunal has power to make such order as it thinks fit under para. 9 of Schedule 4 of 1985 Act, (now paragraph 17), and will do so in appropriate cases rather than remit to TC

[2002/92 D Bailey](#) (reduction in amount of rebate, see paragraph 6)

[2006/405 Transclara](#) (Tribunal may only impose lawful conditions, see paragraph 27)

[2007/459 KDL European](#) (tachograph offences – need for deterrence, see paragraphs 13 & 14)

(see also [2003/85 Nostalgia Bus](#) (at paragraph 6 the Transport Tribunal pointed out that it was a Specialist Tribunal, whose lay members had operational experience in the industry and that this assisted the Tribunal when deciding to exercise its powers under paragraph 9 of Schedule 4 to the 1985 Act, (now paragraph 17 of Schedule 4).

Tribunal can conduct its own balancing exercise, where, for example some findings are overturned but others stand.

[Bradley Fold Travel Ltd & Peter Wright –v- Secretary of State for Transport \[2010\] EWCA Civ. 695](#) (See also [Chapter 22](#) where quotations from this decision will be found).

[T/2014/53 & 54 Carmel Coaches Ltd, Anthony Grove Hazell & Michael James Hazell.](#)

Having found that the TC had failed to carry out an effective balancing exercise the Tribunal concluded that it was not appropriate to remit the matter for rehearing. Instead the Tribunal made a detailed re-assessment of the evidence in the course of conducting its own balancing exercise, (see paragraph 80-86).

Tribunal held that Traffic Commissioner had wrongly concluded that the operator’s licence was void, (s. 28 (2)(A) of the 1981 Act) and allowed the appeal to that extent but revoked the licence for lack of good repute on the ground that the Appellant company could not be of good repute since the sole director was disqualified from holding an operator’s licence.

[T/2013/39 Ribble Valley Coaches Ltd & John Pilkington](#)

(iii) Paragraph 17(3)

At paragraph 19 of [T/2015/50 Ibrar Anif t/a Local Minibus Travel](#) the Tribunal said this:

*“Mr Anif’s submissions were largely based on matters which post dated the public inquiry, for example, his attendance on some of the modules of an operator awareness course; his intention to attend further modules and other courses; and his realisation that he could not operate under a restricted licence in the manner he had proposed to the TC. None of that evidence is admissible for the purposes of this appeal which by law must concentrate on the position as at the date of the public inquiry. Included in that evidence is Mr Anif’s assertion (without documentary evidence in support) that his income from his employment with On:Time Claims is to increase by a third. Even if that were to be admissible, that does not negate the TC’s findings that if Mr Anif were to be offered a school contract (which was his stated intention at the public inquiry) that the primary occupation requirements would not be met”.*

## 7. Human Rights

The position of TC and Tribunal considered – accepted by DETR that TC is a public authority and that proceedings before TC involve determination of operator’s civil rights and obligations. Held by Tribunal that such proceedings are not criminal. Held also that the TC’s hearing was fair and public and that he is independent and impartial – in any event the TC was subject to judicial control by the Tribunal which has full jurisdiction

[2000/65 AM Richardson v. DETR](#)

Tribunal hearing in England or Scotland – practice considered

[2004/364 Pallas Transport](#)

(See Opinion of Court of Session in [McCaffery and Pallas](#) case in [Chapter 22 Appeals from Tribunal](#))

## 8. Fresh Evidence

Two factors are relevant to every application to put fresh evidence before the Tribunal. First, paragraph 9(2) to Schedule 4 to the 1985 Act, (replaced, using the same words, by paragraph 17(3) of Schedule 4 to the 1985 Act as amended), provides that: “The tribunal may not on any such appeal take into consideration any circumstances which did not exist at the time of the determination which is the subject of the appeal”. The prohibition is absolute. The Tribunal has no discretion to take into consideration anything which did not exist at the time of the decision under appeal. Second, and subject to the first point, the tribunal has consistently followed the practice of the Court of Appeal when deciding whether or not to admit fresh evidence.

The wording of paragraph 17(3) is clear and unambiguous. It prevents the Tribunal taking into account ‘any circumstance which did not exist at the time of the determination which is the subject of the appeal’. The use of the expression ‘may not’ deliberately removes any possibility of a residual discretion. There is no question of ignoring this prohibition even where ‘exceptional circumstances’ are advanced.

[T/2013/66 VST Building & Maintenance Ltd \(paragraphs 21 & 22\)](#)



Admission of new evidence on appeal considered: the tribunal's practice and approach

[2002/40 Thames Materials](#)

"Subject to paragraph 9(2) to Schedule 4 to the 1985 Act Rule 32(2)(b) gives the Tribunal discretion to allow "evidence not given before the Traffic Commissioner to be admitted". In deciding whether or not to admit fresh evidence the Tribunal has consistently applied the conditions laid down by the Court of Appeal in *Ladd v. Marshall (1954) 1 WLR 1489*, the most recent of many decisions on the point being [Dukes Transport \(Craigavon\) Limited v. Vehicle Inspectorate Appeal 68/2001](#) and [Goldwings \(Wales\) Limited Appeal 60/2001](#). The relevant *Ladd v. Marshall* conditions, bearing in mind the prohibition on taking into account circumstances which did not exist at the time of the determination subject to appeal, are as follows:-

- (i) The fresh evidence must be admissible evidence.
- (ii) It must be evidence which could not have been obtained, with reasonable diligence, for use at the public inquiry.
- (iii) It must be evidence such that, if given, it would probably have had an important influence on the result of the case, though it does not have to be shown that it would have been decisive.
- (iv) It must be evidence which is apparently credible though not necessarily incontrovertible.

"We would have thought that the first condition hardly needed to be stated but it is quite apparent from the terms of Mr Clarke's statement that it needs to be stressed. There are authorities which indicate that condition (ii) is the critical condition."

(See Opinion of the Court of Session in the *McCaffrey and Pallas* case in [Chapter 22 Appeals from Tribunal](#))

The appellant in T/2015/36 W. Martin Oliver Partnership sought permission to appeal against the Upper Tribunal's decision. In refusing the application, the Court of Appeal Judge (Rt Hon Lord Justice Flaux) gave the following reasons:

1. The sole ground of appeal is that the Upper Tribunal erred in law in applying the principles derived from *Ladd v Marshall [1954] 1 WLR 1489* to its determination as to whether to allow fresh evidence to be adduced. The applicant argued before the Upper Tribunal and argues in its grounds of appeal and counsel's skeleton argument that a more flexible approach, somewhat akin to that adopted in criminal appeals under section 23 of the Criminal Appeals Act 1968 should have been adopted.
2. The Upper Tribunal and its predecessor the Transport Tribunal has consistently followed the principles of laid down by the Court of Appeal in *Ladd v Marshall* in considering application to adduce fresh evidence. The Upper Tribunal followed and applied those principles here. It was entirely correct to do so.
3. The ground of appeal is unarguably hopeless and totally without merit."

A consolidated guide on the Upper Tribunal's approach to fresh evidence and to the admission of a new ground of appeal can be found in the appendix to the decision in [T/2018/27 Allen Transport Ltd and Daniel Allen](#).

## 9. Parties and Representation

The power to add, substitute or remove a party to an appeal is now governed by Rule 9 of the Tribunal Procedure (Upper Tribunal) rules 2008, as amended. Paragraph 5 of



Schedule 1 to those Rules provides that: “*The appropriate national authority and any person to whom the Upper Tribunal has sent a copy of the notice of appeal under paragraph 4 may apply for a direction under rule 9(2) adding them as a respondent*”. Paragraph 6 of Schedule 1 goes on to provide that such an application: “*must be sent or delivered to the Upper Tribunal so that it is received within 14 days of the date that the Upper Tribunal sent a copy of the notice of appeal to the person making the application*”. Rule 5(3)(a) of the rules gives the Tribunal discretion: “*to extend or shorten the time for complying with any rule*”. Rule 7(2) of the rules gives the Tribunal discretion, following the failure of a party to comply with the Rules: “*to take such action as it considers just*”, which may include “*waiving the requirement*”. Whether or not to exercise either discretion will depend on the circumstances of each individual case, including, for example: the explanation for the delay, the impact on other parties and the Tribunal and the interests of justice generally.

[NT/2014/79 Melvin Murray t/a Melvin Murray Transport v DOENI](#) provides an example of the difficulties that can be caused by a late application to add a party, (see paragraph 22). The Tribunal made two points (a) that late applications to be made a party are not acceptable and (b) that the discretion may not always be exercised in favour of adding a party.

TC may not be joined as a party to appeal to Tribunal or above (see the comments by the Court of Session in the [Coakley](#) case (No.1) in [Chapter 17 Appeals from Tribunal](#))

Representation of Vehicle Inspectorate (now VOSA) at PI and appeal is of assistance  
[2001/68 Dukes Transport](#) (see paragraph 21)  
[2001/49 Norbert Dentressangle](#) (See paragraph 10)

This remains the position notwithstanding that the addition of parties to an appeal is now governed by the 2008 Rules.

Representation by unqualified advocate – standing  
[2005/385 K Grant](#) (See paragraphs 4-6)  
[2006/252 A Hayden](#) (See paragraph 11)

In considering both these decisions it is important to remember that the right to representation is no longer governed by the Transport Tribunal Rules but by Rule 11 of the Tribunal Procedure (Upper Tribunal) rules 2008, as amended. The right to representation is no longer as limited as it was when these appeals were decided.

## 10. Practice

Contents of appeal bundle considered – inappropriate for appellant to produce own bundle

[2000/34 Solent Travel](#)

[2002/40 Thames Materials](#)

[2003/254 A Jones](#)

“At the hearing of the appeal Miss Sinclair again appeared for the Appellant. She had only been supplied with a bundle of documents as made up by her

solicitors. Copies of this had been received by the Tribunal that morning and as we made clear in [40/2002 Thames Materials Ltd](#) we are only prepared to consider a bundle of documents which has been provided in accordance with rule 15 of the Transport Tribunal Rules 2000. If it is hoped to produce further documents, an application must earlier be made to the Tribunal. It is necessary for the Tribunal to pre-read all cases and this is impractical if new bundles are provided by Appellants on the morning of the appeal. In fact, no new documents were in the Appellant's solicitors' bundle but the conflict in numbering put Miss Sinclair at an initial disadvantage."

Judicial member may sit alone (rule 20 of Transport Tribunal Rules)

[2002/56 J Tote](#)

Challenge to PI transcript must be made formally in an application to the Tribunal

[2000/1 Gray v. Graham](#)

Absence of transcript – available notes incomplete – new hearing ordered

[2005/347 JM Jones](#)

Absence of transcript – did not have a material effect to the outcome and inevitable that conclusion would be the same

[T/2020/50 Ammanford Recycling Ltd](#)

Re-hearing ordered by Tribunal may be by same TC unless contrary stated

[2003/254 A Jones](#) (see comments by CA in [Chapter 22 Appeals from Tribunal](#))

Tribunal may correct its decisions

[2001/77 Wilton \(Contracts\)](#)

Time for compliance with order to dismiss appeal considered

[2004/372 Maple Industries](#)

Stay pending appeal after revocation for loss of repute does not prevent order for revocation for lack of financial standing

[2003/138 P Coakley](#)

Failure to appear on hearing of appeal – decision to dismiss in absence – refusal to set aside decision

[2001/1 RC Milton](#)

(Nb this decision was taken under the Transport Tribunal Rules 2000, see now Rule 43 of The Tribunal Procedure (Upper Tribunal) Rules 2008 in relation to Set-Aside)

Failure to attend is now governed by Rule 38 of the UT Rules. The Tribunal may proceed if: (a) satisfied that the party has been notified of the hearing, or that reasonable steps have been taken to notify the party of the hearing and (b) the Tribunal considers that it is in the interests of justice to proceed with the hearing.

[T/2015/59 Graham Pender](#) (see paragraph 6)

Reluctance of Tribunal to substitute own order of disqualification because it has not seen the witnesses

[2001/15 K Malone](#)

Tribunal is not bound by previous decisions

[2003/309 B Smith](#) (see paragraph 6)

[2004/426 EA Scaffolding](#) (see paragraphs 55 & 56)

Order for costs when appeal unreasonable – repudiation of regulatory regime – rule 3 of Transport Tribunal Rules considered

[2001/72 AR Brooks](#)

(see also and 2003/262 GW Elliot paragraph 9)

No appeal to Tribunal from formal warning

[2008/268 Funstons](#)

Period of partial curtailment not taken in account upon unsuccessful appeal

[T/2019/25 John Stuart Strachan t/a Strachan Haulage](#)

## Chapter 22 Appeals from Tribunal

The Transport Tribunal is a superior court of record and is not subject to judicial review. Appeals are to the Court of Appeal or the Court of Session and are on points of law only (see para.14 Schedule 4, 1985 Act). Although reports of these appeals may be found elsewhere, the most convenient free website seems to be that of the British and Irish Legal Information Institute (<http://www.bailii.org/>). The following appeals have been heard in recent years, with full title and references being given in the text:

1. [Thomas Muir \(1998\)](#)
2. [Ribble \(2000\)](#)
3. [Crompton \(2000\)](#)
4. [Surrey CC v. Williams \(2003\)](#)
5. [Coakley \(1\) \(2003\)](#)
6. [Coakley \(2\) \(2003\)](#)
7. [Anglorom \(2004\)](#)
8. [Alison Jones \(2005\)](#)
9. [Muck It \(2005\)](#)
10. [McCaffrey and Pallas \(2006\)](#)
11. [Banga Travel \(2008\)](#)
12. [Romantiek \(2008\)](#)
13. [Bradley Fold Travel \(2010\)](#)
14. Catch22Bus Ltd and Phillip Higgs (2019)

### 1. Thomas Muir

25 September 1998 – [Thomas Muir \(Haulage\) Limited v. The Secretary of State for the Environment, Transport and the Regions](#) [1998] ScotCS 13 (25 September, 1998); [1999] SC 86; [1999] SLT 666; (on appeal from 1997 J1); Approach to regulation of goods vehicles under 1995 Act considered generally – convictions, prohibitions and undertakings relating to drivers' hours & rules and tachographs – purpose of directions under s.26 is to achieve objectives of the system – deterrence may be a factor – no need to determine culpability – not to be treated as if punishment in a criminal court – court of 5 judges – earlier decision of Court of Session overruled.

*Per* Lord Cullen, Lord Justice Clerk:

“This appeal requires us to consider the underlying purpose for which the power given by Section 26(1) is provided. That section forms part of a system for the regulation of the operation of goods vehicles, by means of the control exercised over the licences without which that operation could not lawfully take place. Section 13 requires that an applicant for a licence is to be of good repute, of the appropriate financial standing and professionally competent, in accordance with Schedule 3. Under Section 27 revocation of the licence is mandatory if he ceases to fulfil any of these requirements. The applicant also has to show that the various requirements set out in sub-section (5) of Section 13 are met. These relate, for example, to drivers' hours, the avoidance of overloading of vehicles, the maintenance of vehicles in a fit and serviceable condition, and the availability, suitability and sufficiency of the operating centre. Section 26(1) contains a wide range of grounds for a direction apart from those with which the present appeal is concerned. It may be noted that in Section 178 of the Road Traffic Act 1960, which was a predecessor of Section 26, it was stated in sub-section (4) that a direction should not be given on the ground of a conviction or a prohibition unless the licensing authority was satisfied “that owing to the frequency of such convictions or prohibitions as are referred to in that

paragraph, or the wilfulness of the act or omission leading to the conviction of prohibition in question, or the danger to the public

involved in that act or omission, such a direction should be given". No such qualification appears in Section 26(1).

"In the light of that background it is clear that the underlying purpose of a direction under Section 26(1) can only be stated in very broad terms, namely that it is intended to be used, so far as may be appropriate, to achieve the objectives of the system. The proper question is whether in that context the direction is appropriate in the public interest. The objectives of the system

plainly include the operator's adherence to the various requirements of section 13(5). In the case of prohibition and conviction it is plain that the protection of the public is a very important consideration.

"We can see no justification for treating the direction under Section 26(1) in the same way as if it were a punishment administered by a criminal court and hence arrived at by reference to the full range of considerations which such a court would take into account. This appears to us to involve a confusion in roles. When Parliament intends to invoke the criminal law, it does so expressly by enacting provisions which define the offence and its penal consequences.

"On the other hand, it does not follow that a traffic commissioner is prevented from taking into account, where appropriate, some considerations of a disciplinary nature and doing so in particular for the purpose of deterring the operator or other persons from failing to carry out their responsibilities under the legislation. However, taking such considerations into account would not be for the purpose of punishment *per se*, but in order to assist in the achievement of the purpose of the legislation. This is in addition to the obvious consideration that a direction may be used to provide direct protection to the public against dangers arising from the failure to comply with the basis on which the licence was granted. Whether or not such disciplinary considerations come into play must depend upon the circumstances of the individual case.

"How then is the question of possible direction under Section 26(1) to be approached in the present type of case? It is important to bear in mind that the grounds with which we are concerned state that it is the conviction, the prohibition or the non-fulfilment of the undertaking which forms the basis for the direction. In other words, it is envisaged by the section that each of these by itself should be sufficient to justify the making of the direction. The section does not require the traffic commissioner, either expressly or by necessary implication, to determine "the degree of culpability" in order to enable him to act on any of these grounds. Whether the past conduct of the operator is blameworthy is not the determining or critical factor. We are unable to agree with the First Division's view that without assessing the degree of culpability the traffic commissioner cannot form a sound decision as to whether any, and if so, which direction should be given. Likewise, we cannot agree with their observation that fault on the part of the operator is not simply to be inferred from the existence of a prohibition, since this is to seek the answer to the wrong question. Further we disagree with the implication which they drew from the legislation that the licensing authority could not reach a proper determination without distinguishing between fault on the part of the driver and fault on the part of the operator. This appears to suggest that the operator is not responsible when the driver is at fault. It is important, in our view, to observe a clear distinction between questions of responsibility and questions of culpability. It was correctly maintained on behalf of the respondent that the operator cannot avoid responsibility for a conviction for prohibition by seeking

to lay the blame on the driver or on those by whom his vehicles have been maintained. Doing so would provide no answer to

proceedings taken in respect of them. A prohibition qualifies as a prohibition for the purposes of Section 26(1) whether it arises from the fault of the operator or from that of someone else for whom the operator is responsible.”

## 2. Ribble

23 February 2001 – [Ribble Motor Services Limited v. Traffic Commission for North Western Traffic Area](#) [2001] EWCA Civ/2001/267 (23 February 2001); 2001 RTR37; on appeal from 1999 L44);

Regulation of bus services considered generally – approach to ss.6, 26 & 111 of 1985 Act – sizes of samples, windows of tolerance and reasonable excuses reviewed – burden of proving excuses is on operator – TC and Tribunal may bring own specialist knowledge to bear.

*Per* Simon Brown LJ:-

“This appeal concerns timetabled bus services and their operators. Those of us who travel by public transport need these services but we need them to be reliable. The Transport Act, 1985, (the Act) brought in a new approach to the problem. Its policy was to deregulate the initial provision of bus services but then exercise some control over them once in operation. By s.6 of the Act any operator holding a public service vehicles (PSV) operator’s licence may register as a local service any route he chooses to whatever timetable he chooses. A registered service is subject to no scrutiny prior to its operation. Once registered, however, any services are subject to the controls provided for by ss.26 and 111 of the Act. When invoked, s.26 allows a condition to be attached to the PSV licence prohibiting the provision of services; s.111 provides for a determination which results in the operator forfeiting 20% of his entire fuel duty rebate for the previous three months.

“These controls are exercised by a Traffic Commissioner against whose decision the operator can appeal whether on fact or law to the Transport Tribunal. A further appeal lies directly to this Court by only in point of law. The present is the first such appeal ever brought.

.....

“The appellants complain that the Commissioner put the burden on them to prove that they had a reasonable excuse for their failures. It is Mr King’s submission that once the operator puts forward evidence of a reasonable excuse, “it is for the traffic area to eliminate the existence of that defence to the satisfaction of the Traffic Commissioner and the Transport Tribunal”. He relies in support of this submission upon cases in the criminal law such as *R v. Clarke* [1969] 1WLR 1109 which held in the context of breathalyser legislation, that once there is some evidence of reasonable excuse for failing to provide a specimen it is for the prosecution to eliminate the existence of such a defence to the satisfaction of the jury. In my judgment, however, that principle has no application in the present situation. Rather I would regard this as a classic case for holding that the burden lies squarely upon the operator to prove that he had reasonable excuse for his overall failure to meet the timetabling requirements. Three considerations to my mind combine to support such a view. First, even in a criminal case, if an ingredient of an offence relates to a matter peculiarly within the accused’s own knowledge (as must existence of a reasonable excuse), the onus is generally on the accused to prove the exculpatory fact. Secondly, throughout the law, there is a general rule that those who seek to rely on exceptions (which include excuses) must establish them (on the balance of probabilities). Thirdly, the Traffic Commissioner’s jurisdiction is essentially inquisitorial rather than adversarial in nature, and, there being no one to adopt



a prosecutor's role of seeking to disprove any excuses proffered, it should be for the operator to establish them.

"Valiantly though Mr King strove to pray in aid those decisions in support of the present appeal, in my judgment their reasoning on the contrary militates against it. The critical difference between those two cases and this is, of course, that whereas in them specific evidence was called as to realistic reliability rates, here it was not. The Transport Tribunal itself (under the same President throughout) did not regard the later cases as invalidating their own earlier decision. On the contrary, one of the reasons they gave for distinguishing the present case from Yorkshire Rider was the latter's much smaller sampling size. To my mind those decisions throw no doubt upon the lawfulness of the Commissioner's approach in the present case given as his decision expressly noted, "the absence [before him] of persuasive research as to what level of adherence to timetable it is reasonable to expect a city centre operator to achieve".

"That conclusion, however, is not of itself necessarily fatal to Mr King's arguments which still fall to be considered on their intrinsic merits. Was it, then, unlawful in the pre-research era to fix on the 95% benchmark? In my judgment it was not and nor was it unlawful in doing so to have regard to such general experience as could be gleaned from (a) other traffic commissioners' experience and decisions (at the time of the commissioner's decision in the present case solely that of the Senior Traffic Commissioner in Midland Blackbird but later, as the Commissioner in the Yorkshire Rider case observed, "the collective experience of [all] the traffic commissioners"), and (b) whatever information he as an individual traffic commissioner had acquired in the course of inquiries he himself had held. Traffic Commissioners and, of course, the Transport Tribunal, exercise a specialist jurisdiction and inevitably build up a body of expertise in this field. It seems to me quite unrealistic to suggest that they must put this aside when adjudicating on any particular case and confine themselves solely to such evidence as may be called in that case. Equally it seems to me unnecessary for them to notify the operator whose services they are investigating of the experience or information they have acquired or the particular approach they propose to adopt. In all these cases the operator knows in detail what the monitoring exercise has revealed. It is for him then to decide what evidence to call to escape penalty under the Act.

"It follows that I for my part would reject each one of the grounds advanced by Mr King on this appeal. As already indicated, I recognise that the Commissioners' approach to the exercise of their ss.26 & 111 powers is likely in future to be more scientifically based than at the time of this decision. That, however, is not a criticism of earlier attitudes, merely a reflection of the operators' practice nowadays of adducing properly researched evidence at the inquiry. And I would add this. It remains important that these statutory powers should not be emasculated by an over-elaborate approach to the investigation or an unnecessary attention to detail. Ultimately, broad judgments have to be made as to the adequacy and reliability of an operator's published services. Commissioners should continue to impose sanctions on those who seriously fail the travelling public."

*Per Lord Phillips of Worth Matravers, MR:-*

"I also agree that this appeal should be dismissed, for the reasons given by Lord Justice Simon Brown. I would simply add the following observations on the ground of the appeal which Mr King QC put at the forefront of his case – that the Traffic Commissioner had based his conclusions upon a global assessment of the results of the total journeys monitored rather than on an assessment of each of the 26 services on which journeys were monitored. The effect of this

was that a finding of a 12.5% failure rate did not indicate that each of the 26 services was subject to this rate of failure. Some services

performed better than the 12.5% failure rate and others worse. The Traffic Commissioner was, of course, well aware of this. The individual services received individual consideration when examining the matters put forward by the Respondent as constituting “reasonable excuse”. I can see no reason why, when considering the adequacy of operations of the 26 services that were monitored, it was not open to the Traffic Commissioner to consider this question in the round by adopting a global approach.”

(Note – the title to this appeal is misleading. There is no such body as the “Traffic Commission” and counsel for the respondent was instructed on behalf of the Department of Transport. See the Coakley case (No.1) (4 April 2003) below)

### 3. Crompton

21 January 2003 – [Crompton \(T/a David Crompton Haulage\) v. Department of Transport North Western Area](#) ; [2003] EWCA Civ 64 (31 January 2003); 2003 RTR34; (on appeal from [2001/78](#));

Effect of Human Rights Act 1998 on findings of good repute considered – “loutish and intimidating behaviour by an operator of good character at the end of a public inquiry” – whether could be regarded as depriving the operator of good repute – need for relationship of proportionality between finding and sanction

*Per Kennedy LJ:-*

“Mrs Outhwaite points out, rightly, that both the Traffic Commissioner and the Transport Tribunal are public authorities for the purposes of section 6 of the Human Rights Act 1998. They must therefore act in ways compatible with Convention Rights, and so far as possible, read and give effect to domestic legislation in a manner which is compatible with Convention Rights (see section 3(1) of the 1998 Act).

“An operator’s licence is a possession for the purposes of Article 1 of the First Protocol, so the appellant was not to be deprived of it –

“..... except in the public interest and subject to the conditions provided for by law, and by the general principles of international law”

“The Article goes on to say that those provisions shall not –

“..... in any way impair the right of a state to enforce such law as it deems necessary to control the use of property in accordance with the general interest .....

.....

“The amended wording of the domestic statute, the 1995 Act, is based on European Council Directive 96/26/EC as amended by Directive 98/76/EC. The 1996 Directive on the admission to the occupation of road haulage operator was itself a consolidating directive, and it is clear from the recitals that there was a perceived need for Member States to provide rules for road haulage operators dealing with good repute, financial standing and professional competence. The Directive envisaged certain minimum requirements, and provided for inter-state recognition. Part of Article 3, as amended, reads –

“1. Undertakings wishing to engage in the occupation of road transport shall

(a) be of good repute; .....

“2. Member States shall determine the conditions which must be fulfilled by undertakings established within their territory in order to

satisfy the good repute requirement. They shall provide that this requirement is not satisfied, or is no longer satisfied, if the natural

person or persons who are deemed to satisfy this condition under paragraph 1:

- (a) have been convicted of serious criminal offences, including offences of a commercial nature;
- (b) have been declared unfit to pursue the occupation of road transport operator under any rules in force;
- (c) have been convicted of serious offences against the rules in force concerning:
  - the pay and employment conditions in the profession, or
  - road haulage or road passenger transport, as appropriate, in particular the rules relating to drivers' driving and rest periods, the weights and dimensions of commercial vehicles, road safety and vehicle safety, the protection of the environment and the other rules concerning professional liability."

"It is clear from the first sentence of Article 3 paragraph 2, and from the cross-border recognition provisions in Article 8 to which our attention has helpfully been drawn by the skeleton argument provided by Mr Sheldon on behalf of the Secretary of State, that provided the minimum requirements are met individual states can decide for themselves what is necessary to be of good repute. There is no definition to be found in the Directive and its provisions are not exhaustive, as Mrs Outhwaite now accepts.

"That brings us back to the 1995 Act, which also contains no definition of good repute, but it is noticeable that in schedule 3 the opening words of paragraph 1(2) dealing with a company are more restrictive than the opening words of paragraph 1(1) dealing with an individual. When a traffic commissioner is considering if an individual is of good repute he can have regard to "any matter", but if he is considering a company he must confine himself to "all the material evidence". The difference in wording is a little surprising but Parliament cannot have intended a traffic commissioner ever to have regard to immaterial evidence, so the conclusion must surely be that the schedule requires the traffic commissioner when considering alleged loss of repute to focus on matters relevant to the individual's fitness to hold a licence, bearing in mind –

"(a) that an existing licence is a possession safeguarded by Article 1 of the First Protocol, and –

"(b) that if loss of repute is found the inevitable sanction is revocation, possibly followed by an application for a fresh licence which may or not be granted."

"There must therefore be a relationship of proportionality between the finding and the sanction, and that relationship has a direct bearing on the approach to be adopted in any set of circumstances to the question of whether or not the individual has lost his repute.

"All of that seems to me to be in the end non-contentious.

.....

"The Transport Tribunal, having set out the facts and summarised the submissions made on behalf of the appellant, said that his solicitor "repeatedly referred to the loss of the appellant's good repute as too high a penalty or sanction, although he accepted the use of such terminology in the context of the jurisdiction and powers of Traffic Commissioners was inappropriate." The terminology may have been inappropriate, but no doubt it was used because of the approach adopted by the Traffic Commissioner, whose decision in part is reminiscent of a judgment in proceedings for contempt of court. I recognise, as did the Tribunal, that the Traffic Commissioner had the benefit of seeing the operator, but to my mind little now turns on that because the Traffic

Commissioner made her conclusions clear. The Tribunal recognised that “her decision may be viewed as harsh”, but does not seem to have asked itself why it should be viewed in that way. In my judgment the reason was that

the approach adopted by the Traffic Commissioner faltered in the way that I have described. That was an error of law.”

#### 4. **Surrey CC v. Williams**

28 March 2003 – [Surrey County Council v. Paul Williams \(T/a Garden Materials Landscaping\) and Secretary of State for Transport](#) [2003] EWCA Civ 599 (28 March 2003); (on appeal from [2001/56](#));

Suitability of operating centre under s.13(5)(d) of 1995 Act and imposition of conditions under ss.13(9)&21 of 1995 Act considered – appeal by County Council against grant of restricted licence for two vehicles

*Per Rix LJ:-*

“In my judgment, Mr Main-Thompson’s submission that the commissioner and the tribunal were both perverse in their attitude to this sight line methodology is not capable of success in this court. This court cannot properly say that an experienced transport commissioner and an expert transport tribunal have been perverse in the way in which they dealt with these guidelines, especially when Mr Main-Thompson himself accepts, as he does in his grounds of appeal, that:

“(i) The Traffic Commissioner has a discretion and is not bound to apply government guidance for new development to an established access;

“(ii) The fact that a Traffic Commissioner has visited the location before reaching a decision is often a matter to which much weight will attach;

“(iii) The vehicle movements proposed were very limited.”

“It may be noted that the decision whether the operating centre was “suitable for use as such” was ultimately a matter for the commissioner’s, and on appeal for the Tribunal’s, discretion, and that in exercising that discretion they were not required by the Act to have particular regard or give special consideration to the Design Bulletin 32 guidelines: of the terms of s.21(4) cited above.

.....

“At the end of the day Mr Main-Thompson was asking this court to impose its own inexpert views, on whether or not Mr Williams’ operating centre was suitable or not, on an expert transport commissioner and an equally expert transport tribunal. He submitted that on the facts found there was, in the colloquial phrase, “an accident waiting to happen”. He invited the court to speculate, contrary to the findings, that the personal injury accidents that had occurred in West Park Road were associated with the access. This, however, would be at least mere speculation, but in fact on the findings which I have recorded in this judgment, contrary to what both the commissioner and the tribunal stated. If the council is really concerned with accidents on this stretch of the road it has of course the power, as the local highway authority, to reduce the speed limit on West Park Road. This, at any rate to date, it has not done.

“In sum, when regard is had to the expertise of the commissioner and the tribunal below; to all the facts carefully taken into account by the commissioner and the tribunal; to the fact that the commissioner visited the site immediately before the public inquiry which gave rise to his decision; and to the circumstances that he took into account and gave his view upon all the material put before him, and came to an answer in his discretion which reflected both that this operating centre had operated entirely successfully for over a dozen years and that the additional use for which application was now being made was limited to only in total four movements a day; it seems to me, for my part, that it is not at all a matter of surprise that the commissioner and

the tribunal came to the decisions that they did, and in any event it is quite impossible to say that in doing so they arrived at a decision that was perverse, plainly wrong or one that no reasonable tribunal could arrive at.”

*Per Simon Brown LJ:*

“As Lord Justice Rix noted at the outset of his judgment, an appeal to this court from the Transport Tribunal lies only in point of law. The sole complaint in point of law now sought to be advanced on this appeal is that the decisions reached here successively by the traffic commissioner and the Transport Tribunal were perverse. Mr Main-Thompson’s argument can only be that on the undisputed fact of the case those respective bodies each had no alternative but to refuse the licence: they could not properly regard this operating centre as suitable, notwithstanding its successful past use; notwithstanding its very limited proposed further use; and notwithstanding the stringent conditions and undertakings to which the licence was being made subject. For the reasons given by Lord Justice Rix I too agree that this complaint cannot be made good and that the appeal must therefore fail.

“All I wish to add is that it seems to me almost impossible to conceive of any perversity-based appeal from the Transport Tribunal to this court being successful where, as here, there have been two successive fact-based decisions, each to the same effect, and each reached by a body whose relevant expertise and experience is inevitably greater than that which this court can bring to bear on the matter. I express the hope that few, if any, such appeals will be ventured in future.”

## 5. Coakley (1)

4 April 2003 – [Edward Coakley; Coakley Bus Company Limited and Central Bus Company Limited](#) (No.1) ; [2003] ScotCS 101 (4 April 2003); 2003 SC 455; 2003 SLT 1367; (on appeal from [2001/65, 66 & 67](#));

Position of TC considered – whether entitled to appear as party on appeal – whether Secretary of State entitled to appear

*Per Lord Kirkwood:*

“When a traffic commissioner issues a decision in relation to an application for a PSV operator’s licence, or the revocation or suspension of such a licence, it is common ground that, for the purpose of an appeal, a transcript of the proceedings before the traffic commissioner, and his rewritten reasons for his decision, are available to the parties. In terms of paragraph 8 of schedule 4 to the Transport Act 1985, in the event of an appeal to the transport tribunal, the tribunal has full jurisdiction “to hear and determine all matters whether of law or of fact”. In terms of paragraph 14(1) an appeal lies to the Court of Session but in terms of paragraph 14(2) it is provided that no appeal shall lie from the tribunal upon a question of fact or *locus standi*. Further, in terms of Rule 14 of the Transport Tribunal Rules 2000 it is expressly provided that the traffic commissioner may not be a party to an appeal to the tribunal, although the notice of appeal has to be served on him. It was submitted on behalf of the traffic commissioner and the Secretary of State that the traffic commissioner was the proper contradictor in the Court of Session and that he should be entitled to have an opportunity of defending his decision on the merits. However, when he is, in terms of the Transport Tribunal Rules, not entitled to appear before the tribunal to defend his decision, either on the facts or on an issue of law, it is very difficult to find any justification for giving him a right to appear in the Court of Session in order to deal for the first time with questions of law. A further consideration is that the traffic commissioner may well, in relation to a particular decision, have

dealt with disputed questions of fact, which could involve issues of credibility and reliability, and if he appeared to defend his decision on the merits, it would not be appropriate for the case to be remitted back to him for a rehearing, a course which is admittedly open to the Court of Session, although in that connection a remit may be able to be made to a deputy traffic commissioner.

.....

“For the foregoing reasons I move your Lordships to hold (1) that in an appeal from the transport tribunal to the Court of Session in relation to a decision of the traffic commissioner taken under the 1985 Act in respect of a PSV operator’s licence, the traffic commissioner has no locus to appear in the Court of Session; (2) that in such an appeal, the Secretary of State is entitled to appear in the Court of Session if he had been represented before the tribunal and (3) that, if he had not been represented in the proceedings before the tribunal, he is entitled to appear in the Court of Session at the hearing of the appeal only with the leave, or at the invitation, of the court.”

(Note: it would seem that the Court of Session was confused by the title in the Ribble case (above): although this refers to the “Traffic Commission for the North West Traffic Area” counsel was in fact instructed on behalf of the Department of Transport)

## 6. Coakley (2)

17 December 2003 – [Edward Coakley; Coakley Bus Company Limited and Central Bus Company Limited](#) (No.2); [2003] ScotSC 315 (17 December 2003); (on appeal from [2001/65, 66 & 67](#));

Undesirability of TC making own investigations – rules of natural justice – TC made inquiries after conclusion of PI and failed to give appellant proper opportunity to react to new material

*Per* Lord Osborne:

“Against this background, it is necessary to consider what occurred in the present case. As has been indicated, the public inquiry was held on two days, 3 July 2001 and 13 September 2001. However, the Traffic Commissioner’s enquiries did not end there. At paragraphs 23 to 26 of his decision, he narrates what is described as “Actions since 13 September”. This included his making enquiries of the fuel duty rebate section in the Department of Transport, Local Government and the Regions concerning payments made to the appellants in the preceding two years. As a result of that enquiry, he narrates that over a period of time such payments were made into an account held by the second named appellants, about which the Traffic Commissioner had not up till then been told. In paragraph 26 of his decision, the Traffic Commissioner explains the action which he took following upon the acquisition of this and other information. As we see it, correspondence was still taking place regarding those matters on the date when the Traffic Commissioner’s decision was actually issued, 12 October 2001. We see from paragraphs 40 and 41 of the Traffic Commissioner’s decision that he reached conclusions highly adverse to the first named appellant and hence to the second named appellants in the light of a number of matters, including the information which he had ascertained from the fuel duty debate section. Having carefully considered the Traffic Commissioner’s decision, we are not satisfied that either the first named appellant or the second named appellants were given a proper opportunity to react to that material, which was plainly important in the Traffic Commissioner’s decision. In these circumstances the conclusion which we have reached is that the principles of natural justice were breached by the Traffic Commissioner’s proceedings. In particular, we are not satisfied that the first and second named appellants had an effective opportunity to disabuse the Traffic Commissioner of

the unfavourable impressions which he had formed, based upon the information concerned.

“Since the present appeals are brought from the decision, not of the Traffic Commissioner, but of the Transport Tribunal, it is necessary to examine how they approached this aspect of the case. So far as we can see, their approach to the matter is set out in paragraph 22 of their decision where, after referring to *Regina v. Gaming Board of Great Britain ex parte Benaim and Khaida* and *Errington v. The Minister of Health*, they say of the Traffic Commissioner’s enquiries following upon the conclusion of the inquiry hearings:

“But he was open about what had been done and invited comments on the results of his enquiries, both during the hearings and later. Mr McAteer duly wrote his letter of 1 October 2001 and did not suggest the Traffic Commissioner’s procedure had been unfair. Although we think that it is preferable if traffic commissioners resist personal research and rely upon a written statement, we see no unfairness in what occurred.”

“Looking at what is said in paragraph 26 of the Traffic Commissioner’s decision, we cannot agree with the conclusion that there was no unfairness in what occurred. Accordingly, we conclude that the Transport Tribunal erred in law in reaching the opposite conclusion. ....

“Before parting with this matter, we think it appropriate to make observations on two aspects of what has occurred in this case. First, having regard to the requirements of natural justice which we consider apply to a situation in which a Traffic Commissioner conducts a public inquiry, we have been concerned by the conduct by the Commissioner here in pursuing investigations of his own following upon the closure of the inquiry proceedings on 12 September 2001. Where investigations are made at such a stage in proceedings, no doubt it would be possible for the requirements of natural justice to be observed if the applicants were to be given a full and effective opportunity to rebut any adverse inferences which might be drawn by the Traffic Commissioner on the basis of the results of his investigations, which we do not think was done in the present case. That might be achieved either by the reconvening of the oral proceedings and the giving of full notice to the applicants of the nature of the material elicited, or, alternatively, by the full disclosure of that material and the affording of a full and effective opportunity to comment upon it. However, we think that the better course might well be for such investigations not to be conducted at all, unless there exists a compelling reason for the taking of such a course, which is stated. We consider that, in cases where such investigations are conducted, there may be a serious danger that the proceedings will not satisfy the requirements of natural justice, as we have explained them, unless great care is taken to follow one or other of the courses which we have mentioned.

“Unfortunately, in these appeals, matters did not proceed in the manner contemplated by the Extra Division. Despite what had been said in their decision, the Secretary of State decided to confine the submissions which he was prepared to make to this court to what were described as human rights issues, being submissions in relation to the compliance of the system of Traffic Commissioners and the Transport Tribunal with international requirements. The result of that posture and the earlier decision of the Extra Division has been that no person was represented before the court who was both able and willing to make submissions concerning the appellants’ contentions in relation to what might be called the merits of the appeals themselves, leaving aside human rights issues. The unfortunate result has therefore been that this court has had the disadvantage of requiring to make a decision on the appeals without the benefit of a contradictor in relation to, *inter alia*, the matters which have formed the grounds of its decision. That state of affairs inevitably has an effect upon the standing of this court’s decision.”



## 7. Anglorom

30 July 2004 – [Anglorom Trans \(UK\) Limited v. Secretary of State for Transport](#); 2004 EWCA Civ 998 (30 July 2004 on appeal from [2003/343](#))

Position of transport manager considered – transport manager prevented from carrying out duties by operator’s managing director – company failed to meet requirement of professional competence – proportionality under the *Crompton* case has no application if as a question of fact requirement of professional competence has not been met.

*Per* Laddie J:-

“Schedule 3 paragraph 8(2) provides that a company must employ a transport manager. As a matter of common sense, this cannot mean that it simply has to employ an individual with the relevant qualifications. It must be a reference to employing someone who not only has the necessary qualifications but uses them for and on behalf of the company. If the employee does not perform the relevant transport management functions, he is not acting as a transport manager. The result is that the company fails to meet the requirements of Schedule 3 paragraph 8(2)(a) because, in substance, it has no transport manager. For that reason it does not have the necessary professional competence, as defined by the Act. If this is so, it fails to meet the requirements of section 13(3)(c) and its application for a licence **must** fail. Alternatively, if it already has a licence, it falls within section 27(1)(c) and the Traffic Commissioner has the power to revoke. In this case, both the Traffic Commissioner and the Transport Tribunal have held, in effect, that the relevant companies had no transport manager because Mr Briggs, whatever his qualifications, was not acting as one.

“In my view, the Traffic Commissioner and the Transport Tribunal cannot be faulted on this issue. The approach is consistent with the definition of transport manager in section 58(1). He is a person who “has continuous and effective responsibility” for the management of the transport operations. Someone who does not have such continuous and effective responsibility is not, for these purposes, a transport manager. Mr Maclean also points to the fact that Schedule 3 paragraph 8(2)(a) requires the company to have a transport manager “in respect of its road transport undertaking”. He points to the provisions of section 58(4)(a)(ii) ..... which stipulate that this is only fulfilled if, in the relevant business, the transport manager is given “responsibility for the operation of goods vehicles” used under the licence. If he is not given that responsibility, the requirements of paragraph 8(2)(a) are not met. “It should be noticed that *Crompton* decides that, once there has been a finding of loss of repute, revocation is inevitable. First Protocol considerations come into play in determining whether there has been a loss of repute.

It seems to me that these principles have little application in this case. Here there is no question of balancing various factors to determine whether the Appellants conducted themselves so badly as to justify a finding of loss of repute. This is a case where no balancing is appropriate or possible. The Appellants have lost their licences because they have failed to use a transport manager as required by the legislation. Had that finding been made at the stage when they were applying for their licences, it would not have been open to the Traffic Commissioner to have granted them. The position can be no different simply because the Appellants have secured licences. It follows that, once it has been determined as a question of fact that the Appellant had failed to comply with this core statutory requirement, a finding of loss of repute was inevitable as was the consequential order for revocation.”

(Note (i) – the transport manager had not appealed and the conclusion that the finding of loss of repute against him could not be supported was obiter. It would seem that the CA was not referred to cases such as [2003/258 J Cowan](#) where it was held

that a transport manager who is overridden by an operator is obliged to give a written warning and then to resign, rather than to carry on when unable to perform his duties – see [2004/255 M Oliver](#);

(ii) – the CA was not referred to the [Thomas Muir](#) case (see in [Chapter 17](#) above) or to [2001/074 BE Clark](#) (see [Chapter 14](#) above) and the comments on disqualification must be viewed accordingly – see [2005/355 Danny W Poole International](#) where CA approach not followed:- “We have to say that it appears that the *Anglorom* case was decided without consideration of all relevant cases. In particular, we have also to say that references in the Court of Appeal to “punishment” and to “this most draconian order” are not consistent with the approach of the five-judge Court of Session decision in the *Thomas Muir* case. Until the matter is considered again by an appellate court we consider that the *Thomas Muir* approach should be followed, as we endeavoured to do in the *BE Clark* case.”

## 8. Alison Jones

18 January 2005 – [Alison Jones t/a Shamrock Coaches v. Department of Transport Welsh Traffic Office](#) ; (2005) EWCA Civ 58 (18 January 2005) on appeal from [2003/254](#);

Regulation of bus services – imposition of financial penalty – appeal to Tribunal – remission to Traffic Commissioner for rehearing of part – whether rehearing should be before different Traffic Commissioner – whether Traffic Commissioner should have recused himself.

*Per* Smith LJ:

“On the question of whether the Transport Tribunal must have intended that the second hearing should be conducted by a different Commissioner, it seems to me that the evidence is clear. They did not. It is common ground that the practice of the Tribunal, if intending to make such a direction, is that it will be explicitly spelled out. The absence of any such direction implies that the second hearing is to be conducted by the same Traffic Commissioner as before. Here matters went further because the appellant’s solicitors sought clarification of the Tribunal’s order, and the reply certainly does not suggest that the Tribunal had intended that there should be a change of Traffic Commissioner. Indeed, everything points to the conclusion that the Tribunal did indeed intend that Mr Dixon should conduct the second hearing and confine himself to the limited issues that they had identified.

“That, however, is not conclusive of the issue as to whether Mr Dixon was right to refuse the appellant’s application that he should recuse himself. The appellant submitted that he should have done so on the ground that his decision had been criticised and found fundamentally flawed. She argued before this court, as she had argued before him, that he was no longer in a position to do justice to the appellant’s case.

“It is well established that there will be cases where a new decision-maker is required on a re-hearing, and when those circumstances arise the re-hearing will of necessity have to be de novo. Whether that is necessary and appropriate depends upon the circumstances of the individual case. Typically those circumstances arise where the decision-maker has shown bias against the losing party or has expressed a view about the case from which it would be difficult or impossible for him or her to depart. It will also be appropriate where the decision is fundamentally flawed.

“However, in my view those circumstances did not arise in this case.”

*Per Judge LJ:*

“Paragraph 9 of Schedule 4 of the Transport Act 1985 provides that the Transport Tribunal:

“..... *shall have power --*

*(a) to make such order as they think fit; or*

*(b) to remit the matter to the traffic commissioner for re-hearing and determination by him in any case where they consider it appropriate and any such order shall be binding on the traffic commissioner.”*

“In my judgment, on its proper construction these provisions are wide enough to allow the Transport Tribunal to remit the case for full reconsideration generally or for such limited purposes as the Tribunal thinks fit and, if so, to direct either that the hearing should take place before the same or before a differently constituted Tribunal as appropriate. In short, the jurisdiction point was rightly addressed and decided by the Transport Tribunal .....

“At the hearing of this appeal, Ms Sinclair decided that she should not seek to sustain the submission to the contrary to be found in her skeleton argument. That concession, based on a closer analysis of the statutory provisions than she had been able to address earlier, was in my judgment rightly made and sensibly dealt with.”

## 9. Muck It

15 September 2005 – [Muck It Ltd and Others v. Secretary of State for Transport](#) (2005) EWCA Civ 1124 on appeal from [2004/314](#);

Revocation for loss of repute considered – burden of proof – distinction made between repute at time of application for a licence and subsequently – effect of Council Directive 92/26/EC of 29 April 1996 (as amended) considered – on facts appeal dismissed on issue of repute but allowed on issue of disqualification of (absent) directors.

*Per Rix LJ:*

“52. The essential submission of Mr Nesbitt on behalf of Muck It is that there is a difference in statutory language between the 1995 Act’s provisions relating to applications for a licence on the one hand and revocations of an existing licence on the other hand. He submits that that distinction is to be found in the EU Directive as well. When making an application, it is the applicant who has to satisfy the authorities, here the traffic commissioner, of the three fundamental requirements. However, when revoking an existing licence, the burden is the other way round in that the commissioner now has to be satisfied that the requirements are no longer met. Mr Nesbitt also supports these submissions by reliance, in the light of *Crompton*, on article 1 of the First Protocol of the ECHR and section 3 of the Human Rights Act 1998 (the “HRA 1998”): since a licence is a species of property, the 1995 Act should not be construed, unless it is inevitable, as permitting its revocation and thus loss by a disproportionate imposition of a burden of proof on the licence holder.”

.....

“60. It will have been observed that the critical language under section 26 is that a commissioner may direct that a licence be revoked “on any of the following grounds”; and under section 27 that a commissioner shall direct that a licence be revoked “if at any time it appears to him that” the licence holder “no longer” meets any of the three fundamental requirements. Those expressions do not replicate the language of section 13, namely that the commissioner “must be satisfied” that an applicant meets the three requirements, and the contrast has led to the current dispute between Muck It and the Secretary of State.”

.....

“67. It is, however, article 6 of the Directive that is of most interest to the present issue. That provides:

‘1. Decisions taken by the competent authorities of the Member States pursuant to the measures adopted on the basis of this Directive and entailing the rejection of an application for admission to the occupation of road transport operator shall state the grounds on which they are based.

Member States shall ensure that the competent authorities check regularly and at least every five years that undertakings still fulfil the requirements of good repute, financial standing and professional competence.

If the requirement of financial standing is not fulfilled at the time of checking the authorities may where the undertaking’s other economic circumstances give grounds for assuming that the requirements of financial standing will again be sustainably fulfilled within the foreseeable future on the basis of a financial plan, give further notice of not more than one year.

2. Member States shall see to it that the competent authorities withdraw the authorization to pursue the occupation of road transport operator if they establish that the conditions of Articles 3(1)(a), (b) or 9(c) are no longer satisfied. In this case, however, they shall allow sufficient time for a substitute to be appointed.’

“68. Article 6.1 clearly relates to applications and article 6.2 clearly relates to revocations. Article 6.1 is neutral as to where the burden of proof lies, but of course in the case of applications it is natural to think that it lies on the applicant. Article 6.2, however, dealing with the case of revocation, expressly states that this shall follow “if [the competent authorities] establish .....”. That seems to me to be language inconsistent with a conclusion that the burden of satisfying the authorities remains on the licence holder. In between the situations of application and revocation lies that of the five year review, dealt with in the second and third paragraphs of article 6.1, but not replicated in the 1995 Act, although we were informed that as a matter of practice five year reviews are carried out by the transport commissioners. There again the language of the article remains neutral.

“69. Turning back to sections 26 and 27 of the 1995 Act, I would conclude that for revocation to be possible under the former or mandatory under the latter, it is the commissioner who must be satisfied of the ground of revocation, and not the licence holder who must satisfy him to the contrary. That seems to me to be the natural way to regard both the language of those sections, and the situations contemplated in them. The context is that of a licence holder and the possible revocation of his licence. Revocation can only be done on some specified ground (section 26) or because one or other of the three fundamental requirements is no longer satisfied (section 27). Under section 26(4), the commissioner can only act if “the existence of” a ground comes to his notice. It is counter-intuitive to think of a licence holder being required to negative the existence of a ground raised against him. So with section 27. The commissioner must revoke if “it appears to him” that the licence holder is no longer of good repute or of appropriate financial standing or professionally competent. That seems to me to mean that the commissioner must be satisfied that the requirements are no longer fulfilled. If it had been intended to place the same burden on the licence holder as had been placed on the original applicant, then the same language as that found in section 13 would have been used.

“70. In *Richardson* the transport tribunal had decided otherwise (see para 9):

‘It must be borne in mind that the burden of proving compliance with the many requirements set out in s.17 of the 1981 Act’ [the Public Passenger Vehicles Act 1981, which contains provisions in similar

terms to sections 26 & 27 of the 1995 Act] “is and remains on the operator. Thus, at the time of applying for a licence, it is for the operator to satisfy the Traffic Commissioner that he meets the specified requirements (see s.14 [the passenger vehicle equivalent of section 13 of the 1995 Act]). Thereafter the Traffic Commissioner may at any time put the requirements in issue. Once raised, it is for the operator then to satisfy the Traffic Commissioner that he continues to satisfy those requirements. The burden of proving this remains throughout on the operator .....

“71. I must state, with respect, that I do not find that reasoning compelling. The argument proceeds from the language of section 14 (the passenger vehicle equivalent of section 13 of the 1995 Act, then as now put in terms of the need for the commissioner to be satisfied, to the different language of section 17 (the passenger vehicle equivalent of sections 26/27 of the 1995 Act), without any recognition of the fact that the language is different. Nor is there any consideration of the language now contained in article 6 of the Directive.”

## 10. McCaffrey and Pallas

2 June 2006 – [JJ McCaffrey t/a Montana Freight Services and Sylvia Pallas t/a Pallas Transport](#) (2006) CS1H 32 X A 100/04 on appeal from [2003/315](#); Appeal allowed on basis that Tribunal failed properly to consider admission of new evidence; and that it failed to apply correct burden of proof on issue of financial standing – see [Muck It](#) case above. Case remitted for rehearing on issue of repute.

## 11. Banga Travel

15 January 2008 – [PR Banga t/a Banga Travel v. Secretary of State for Transport](#) (2008) EWCA Civ 188 on appeal from [2006/481](#); appeal dismissed – no points of law raised:

“18. .... He says that the tribunal erred in finding the Traffic Commissioner’s decision proportionate. This frankly is, as a point of law, a non-runner. What is proportionate in any given case does not normally give rise to any issue of law. It is a matter for the decision-maker to balance all the various considerations that are involved in a decision on proportionality: see, in a very different context, this court’s decision in [Mukarkar v. SSHD](#) [2006] EWCA Civ 1045 at paragraph 11. It is only if a decision on proportionality adopts the wrong legal approach or is perverse that there will be an error of law. [Counsel] does not shrink from arguing that revocation and disqualification here was so disproportionate as to be perverse; that is to say in the true *Wednesbury* unreasonable sense that it was a decision to which no reasonable tribunal, properly instructing itself, could on the evidence have come.

“19. Frankly, to my mind, that is a hopeless submission. There plainly were legitimate options open to the Traffic Commissioner on the facts involving revocation and disqualification. The Transport Tribunal from which this appeal is brought is a specialist body. This court will be reluctant to find that it has been perverse in reaching a decision on the merits and certainly there is no basis for us so finding in this case. The safety of the travelling public is not only a legitimate consideration to balance against the business interest of the appellant, it is a matter of great importance and clearly weighed heavily both with the Traffic Commissioner and the Transport Tribunal. There

is no possible argument that these decisions were perverse. For my part I can see nothing of merit in these various points which were pursued before the Transport Tribunal.”

## 12. Romantiek

16 May 2008 – [Romantiek Transport BVBA & Others v. Vehicles and Operator Services Agency](#) (2008\* EWCA Civ 534 on appeal from [2007/172](#) etc; appeal dismissed – Belgian licensed vehicles impounded when not carrying out temporary work (cabotage) in the UK – no UK operator’s licence – refusal to return vehicles upheld:

“If the vehicles is not performing cabotage at all but in truth operating full time in a Member State (in which, as it happens, its authority to operate has been revoked) and not in its State of purported establishment, it cannot be intended that that activity can continue unlicensed. Paragraph 23 must therefore be read as requiring the cabotage actually to exist before the exemption applies. Any other reading would, in my view, border on the absurd.”

## 13. Bradley Fold

18 June 2010 – [Bradley Fold Travel Ltd & Peter Wright –v- Secretary of State for Transport \[2010\] EWCA Civ. 695](#) (on appeal from 2009/289 etc; appeal dismissed – correct approach on the part of the Tribunal when hearing an appeal from a decision by a Traffic Commissioner explained, Appellant ‘assumes the burden of showing that the Traffic Commissioner’s decision was wrong, to succeed the Appellant must show that there are objective grounds on which the Tribunal is required to reach a different view. The Tribunal is entitled to exercise its own discretion on the basis of the findings which are either unchallenged or upheld. The judgment of the Court of Appeal was given by Leveson LJ, who said:

“34. The first issue raised by this ground is to identify the breadth of the review which the Transport Tribunal (and, thus, now the Upper Tribunal) must undertake. On behalf of the Operator and Mr Wright, it is argued that the language of paragraph 8 of Schedule 4 to the 1985 Act (“full jurisdiction to hear and determine all matters whether of law or of fact”) did not permit the Transport Tribunal to limit itself simply to a review of the ‘reasonableness/rationality’ of the Deputy Commissioner’s conclusions but required the actual evidence to be addressed and consideration given to the extent to which relevant features of the case had been ignored. This requires an analysis of the effect of the jurisdiction and its proper function as an appellate body from the decision of the Deputy Commissioner.

35. The first point to make (the contrary not being suggested) is that the function of the Transport Tribunal is not equivalent to an appeal to the Crown Court against a conviction in criminal proceedings in the magistrates’ court which is treated, in effect, as a new first instance hearing with evidence (which may or may not be the same as was called before the magistrates) being called a second time. Although there is a power to permit further evidence (see para. 8(2), subject to para. 9(2) which does not permit any appeal to take into consideration any circumstances which did not exist at the time of the determination subject of the appeal), whether or not to permit such evidence is clearly a matter for the tribunal: it does not arise in this case as no attempt was made to rely on it.

36. Thus, although the jurisdiction is to hear and determine matters of both fact and law, the material before the Transport Tribunal will consist only of the documents placed before the Deputy Commissioner and the transcript of the evidence; the Tribunal will not have the advantage that the Deputy Commissioner had of seeing the parties and the witnesses, hearing them give evidence and assessing their credibility both from the words spoken but also the manner in which the evidence was given. Recognising that advantage both in relation to credibility and findings of fact, in *Biogen Inc. v. Medeva Ltd* [1997] RPC 1, Lord Hoffmann explained (at 45):

“The need for appellate caution in reversing the trial judge’s evaluation of the facts is based upon much more solid grounds than professional courtesy. It is because specific findings of fact, even by the most meticulous judge, are inherently an incomplete statement of the impression which was made upon him by the primary evidence. His expressed findings are always surrounded by a penumbra of imprecision as to emphasis, relative weight, minor qualification and nuance ... of which time and language do not permit exact expression, but which may play an important part in the judge’s overall evaluation.”

37. The extent to which those considerations are appropriate was considered in *Assicurzioni Generali SpA v. Arab Insurance Group* [2002] EWCA Civ 1642, [2003] 1 WLR 577, in which Clarke LJ (as he then was) gave guidance in relation to appeals based on errors of fact in these terms:

“15. In appeals against conclusions of primary fact the approach of an appellate court will depend upon the weight to be attached to the findings of the judge and that weight will depend upon the extent to which, as the trial judge, the judge has an advantage over the appellate court; the greater that advantage the more reluctant the appellate court should be to interfere. As I see it, that was the approach of the Court of Appeal on a ‘re-hearing’ under the Rules of the Supreme Court and should be its approach on a ‘review’ under the Civil Procedure Rules.

16. Some conclusions of fact are, however, not conclusions of primary fact of the kind to which I have just referred. They involve an assessment of a number of different factors which have to be weighed against each other. This is sometimes called an evaluation of the facts and is often a matter of degree upon which different judges can legitimately differ. Such cases may be closely analogous to the exercise of a discretion and, in my opinion, appellate courts should approach them in a similar way.”

38. The approach to appeals in cases such as this was further considered in *Subesh & ors v. Secretary of State for the Home Department* [2004] EWCA Civ 56, [2004] INLR 417 in relation to the statutory regime then in force by which an appeal lay from the Adjudicator (who heard the evidence) to the Immigration Appeal Tribunal. Para. 22 of Schedule 4 of the Immigration and Asylum Act 1999 conferred an unqualified right of appeal on any party, not limited by reference to any particular issue.

39. Giving the judgment of the court, Laws LJ analysed the authorities (both general and specific to asylum and immigration). Having made the preliminary points that the IAT’s jurisdiction was not limited by *Wednesbury* considerations (see [1948] 1 KB 223) and that it was “commonplace” that “an appellate court which has not heard the material oral testimony must be slow to impose its own view” (see [40] and [41]), he approached the question of what was meant by error – as opposed to mere disagreement – sufficient to justify interference with its decision. He said, the emphasis being his (at [44]):



“The answer is, we think, ultimately to be found in the reason why (as we have put it) the appeal process is not merely a re-run second time around of the first instance trial. It is because of the law’s acknowledgement of an important public interest, namely that of finality in litigation. The would-be appellant does not approach the appeal court as if there had been no first decision, as if, so to speak, he and his opponent were to meet on virgin territory. The first instance decision is taken to be correct until the contrary is shown. As Lord Davey put it in *Montgomerie* [[1904] AC 73 at 82-3], “[i]n every case the appellant assumes the burden of shewing that the judgment appealed from is wrong” (our emphasis). The burden so assumed is not the burden of proof normally carried by a claimant in first instance proceedings where there are factual disputes. An appellant, if he is to succeed, must persuade the appeal court or tribunal not merely that a different view of the facts from that taken below is reasonable and possible, but that there are objective grounds upon which the court ought to conclude that a different view is the right one. The divide between these positions is not caught by the supposed difference between a perceived error and a disagreement. In either case the appeal court disagrees with the court below, and, indeed, may express itself in such terms. The true distinction is between the case where the appeal court might prefer a different view (perhaps on marginal grounds) and one where it concludes that the process of reasoning, and the application of the relevant law, require it to adopt a different view. The burden which an appellant assumes is to show that the case falls within this latter category.”

40. Thus, Laws LJ made it clear that the question was whether the appellate tribunal “concluded on objective grounds that that a different view from that taken by the Adjudicator was the right one, or (and we mean it to be the same thing) whether reason and the law impelled them to take a different view” ([53]). For my part, this reasoning applies equally and with as much force to appeals from the Commissioner to the Transport Tribunal; neither do I read the recent decisions emanating from that tribunal to which we have been referred as suggesting to the contrary”. .....

“46. The Operator and Mr Wright also argue that the decision of the Transport Tribunal is flawed because of its failure to deal with the case they advanced regarding pre-MOT inspection, the circumstances of MOT failures, contradictory treatment by the Deputy Commissioner of the meaning of ‘advisory’ items and the real relevance of Mr Wright’s history as a whistle-blower. For the reasons that I have sought to outline, that argument starts from the wrong position. The Transport Tribunal set out the facts in summary form and analysed the complaints which were advanced to it. The judgment is conspicuous for its clarity and its demonstrable attention to the detail. In a number of respects, the Tribunal accepted the submissions made about the conclusions reached by the Deputy Commissioner (both in relation to the undertaking to have in place a contractor who would rectify all defects found at safety inspection and the errors in relation to the dating of the tachographs). The Tribunal then considered the extent to which those errors invalidated or undermined the overall conclusions reached. The determination that they did not was entirely open to the tribunal and reflective of the appropriate approach to issues of primary fact and inference: it does not even start to generate any issue of law which would justify intervention by this court”.

## 14. Catch 22 and Phillip Higgs

18 June 2019 – [Catch22Bus Ltd and Philip Higgs v The Secretary of State for Transport \[2019\] EWCA Civ 1022](#) (on appeal from T/2016/72). Per Sharp LJ:

37. The appellants' case has shifted somewhat from its starting point. By the time this matter came to the Upper Tribunal, it was no longer in issue that the DTC was entitled

to take account of conduct that was not unlawful in determining the question of good repute. Further, as indicated earlier, the relevant legal principles as identified by the DTC, and his findings of fact are not now the subject of challenge. The real focus of this appeal is on the DTC's evaluative judgment, and on the decision of the Upper Tribunal to uphold it. As to that, I can see no basis for interfering with the decision of the Upper Tribunal. In my judgment, the DTC's analysis, set out above, disclosed no error, and the Upper Tribunal was correct to confirm his decision for the reasons it gave.

38. The appellants submitted that evidence of a personal dislike of a traffic commissioner by a director of a company which holds an Operator's Licence and a desire to criticise her public conduct, whether purely malicious or otherwise, is not relevant to the operator's ability to operate bus services in keeping with the regulations. However, the question of relevance is a concrete, not an abstract one; and as the Upper Tribunal identified, it is important to focus on the facts as found by the DTC.
39. Specifically, these were as follows. Mr Higgs' conduct was targeted at the STC in consequence of her performing her functions within the regulatory regime in making a decision adverse to Mr Higgs. It was not the case, as Mr Higgs had suggested that his intention was merely for her to be held to account for her behaviour. Mr Higgs' conduct amounted to a serious invasion of privacy and inevitably led to the considerable upset and distress reported to the police. The worry and distress arose because the STC (neither unreasonably nor surprisingly) thought that her home had been identified and/or was under surveillance. The conduct did not merely involve following and filming the STC in an attempt to obtain footage that might harm her reputation and standing. It also involved posting a video on YouTube in an attempt to cause her maximum damage and embarrassment. Mr Higgs was at best uncaring about the impact on the STC, and it was more likely than not that he wanted to cause her distress and was acting out of malice. His conduct showed animosity, resentment and a tendency to take the law into his own hands. The seriousness of what occurred was compounded by the fact that the video was uploaded and sent through post using a false identity. Mr Higgs knew what he was doing was wrong, hence his decision to cover his tracks. The connection back to Mr Higgs was only discovered after specially trained police were able to trace him.
40. Further, Mr Higgs could not say if he would do the same thing again in the same circumstances. He expressed no remorse or apology for causing distress or for any other aspect of his conduct. Whilst the police had decided not to prosecute Mr Higgs for harassment, they had issued the Harassment Notice in relation to his conduct. Mr Higgs had had a range of acceptable options open to him that did not involve this sort of conduct, to raise and deal with his sense of grievance and suspicion. Instead he chose to engage in conduct that was a totally inappropriate response to the injustice he perceived had been done to him.
41. The DTC and the Upper Tribunal, with their specialist knowledge of this field, considered these were matters that were quite obviously relevant to the good repute and fitness questions being considered by the DTC, and demonstrably connected to Mr Higgs' fitness to hold a licence. I agree. In my view, the facts demonstrated that Mr Higgs' conduct could properly to be characterised as an affront to the regulatory system rather than (merely) an affront to the particular individual concerned. As Sir James Eadie QC submitted, they indicated that Mr Higgs was a man who was unprepared to accept regulatory action or confine himself to the legitimate routes available for redress, but was prepared to (and did) operate outside the system by maliciously targeting the decision-maker responsible for overseeing and administering the regulatory system through an intrusive, distressing and intimidating campaign designed to destroy or seriously damage her reputation. This included with the Upper Tribunal to whom a copy of the video was sent at a time when he had, under his own

name, apparently engaged with the process of appeal. There could be no assurance against repetition were he to be the subject of an adverse adjudication in the future, in circumstances where Mr Higgs knew what he was doing was wrong and demonstrated neither remorse nor any real insight about the implications of his conduct, appearing instead to consider that the ends justified the means.

42. In those circumstances, the Upper Tribunal's strong core conclusion, reflecting that of the DTC, that Mr Higgs intended to create an intimidatory atmosphere for others involved in traffic adjudication and that such conduct represented a direct attack on the very essence of an independent adjudicatory process was one it was justified in reaching on the facts; as was its conclusion and similarly reached that these matters went directly to the "implicit expectation of trust which it is often said is the basis of the relationship between operators and the Traffic Commissioners" and to the likelihood of Mr Higgs' future compliance with the licensing regime (the *Priority Freight* question). The issue of proportionality was carefully considered by the DTC who specifically asked himself whether this was a case where the conduct was such that the operator ought to be put out of business (the *Bryan Haulage* question). In the light of the findings he had made, including as to the seriousness of what had occurred, and its implications for future conduct, the decision that the company had lost its good reputation and that Mr Higgs should be disqualified for holding or obtaining a PSV operator's licence for 12 months could not be described as irrational; on the contrary, it was, in my view, a reasonable one.

## 15. Coach Hire Surrey Ltd and Paul Jones

17 December 2020 – [Coach Hire Surrey Limited and Paul Jones v Traffic Commissioner for the London and South East Traffic Area and Secretary of state for Transport \[2020\] EWCA Civ 1706](#). There was (and still is) some confusion about whether a passage in Statutory Document 10 which set out a tariff for disqualifications was "guidance" or "general directions". The distinction is important as McCombe LJ explained (paragraphs 19-20 and 23-29):

19. In *CG Cargo* [[2014] UKUT 0436 (AAC)], the UT quoted what used to be para. 74 of the Statutory Document No. 10 issued by the Senior Traffic Commissioner as follows:

"74. Taking account of the guidance from the Upper Tribunal that each case must be looked at on its merits, Traffic Commissioners may wish to use as a starting point for a first public inquiry consideration of a disqualification period of between 1 and 3 years, but serious cases, where, for example, the operator deliberately puts life at risk and/or knowingly operates unsafe vehicles or allows drivers to falsify records, may merit disqualification of between 5 to 10 years or in certain cases for an indefinite period. It is always open to a disqualified person to make application for removal or reduction of the order. Unless there are exceptional circumstances, a disqualification of less than two years will not normally be reduced, and disqualification for longer or indefinite periods will not normally be reviewed, until half the period or 5 years of the disqualification have elapsed as applies."

Mr Pojur submitted that, even regarding this case as a serious one, the TC did not explain why it was justified going to the top of the range in imposing the disqualification. Why, he asked rhetorically, was a ten year period appropriate and not five?

20. Mr Pojur made the obvious point that the period of disqualification imposed here is an extremely long one and far exceeded the five year rehabilitation period that applies in

respect of Mr Jones's convictions which were a material element in the decision-making process of both the TC and the UT. He referred us to the UT decision in *David King t/a Military World* [2018] UKUT 0098 (AAC). In that case the UT said (at para. 29) that it took "as a barometer" for the proportionality of their decision the length of the rehabilitation period applicable in the case of that appellant, who had been convicted and imprisoned for tax evasion offences. As seen already, the UT did not consider that the rehabilitation period in respect of Mr Jones's crimes had the same relevance in this case as in *David King*.

...

23. For present purposes, the important statutory provision as to disqualification is to be found in s.28 of the Transport Act 1985 (in sub-ss. (1) and (5)), as follows:

"(1) Where the traffic commissioner for any traffic area revokes a PSV operator's licence, he may order the former holder to be disqualified, indefinitely or for such period as he thinks fit, from holding or obtaining a PSV operator's licence.

...

(5) The powers conferred by this section in relation to the person who was the holder of a licence shall be exercisable also—  
(a) where that person was a company, in relation to any officer of that company; and  
(b) where that person operated the vehicles used under the licence in partnership with other persons, in relation to any of those other persons and any reference in subsection (6A) below to subsection (1) above or to subsection (4) above includes that subsection as it applies by virtue of this subsection."

I also note ss. (6A) providing that a TC may at any time cancel or vary a disqualification direction. Mr Pojur asked us to bear in mind that Directions given by the Senior Traffic Commissioner ("STC") say that a disqualification for this length will not normally be reviewed until 5 years have elapsed unless there are exceptional circumstances.

24. PSVA 1981 s. 4C provides that the STC can give guidance or general directions on certain matters. The relevant provisions are as follows:

"4C Power of senior traffic commissioner to give guidance and directions

(1) The senior traffic commissioner may give to the traffic commissioners

- (a) guidance, or
- (b) general directions, as to the exercise of their functions under any enactment.

This subsection is subject, in relation to Scotland, to subsection (5) below [and, in relation to Wales, to subsection (6) below.

(2) The guidance that may be given under subsection (1)(a) above includes guidance as to

- (a) the meaning and operation of any enactment or instrument relevant to the functions of traffic commissioners;
- (b) the circumstances in which, and the manner in which, a traffic commissioner should exercise any power to impose any sanction or penalty;
- (c) matters which a traffic commissioner should or should not take into account when exercising any particular function.

- (3) The directions that may be given under subsection (1)(b) above include directions as to
- (a) the circumstances in which, and the manner in which, officers or servants of a traffic commissioner may exercise any function for or on behalf of the traffic commissioner, and any conditions which such officers or servants must meet before they may do so;
  - (b) the information which a traffic commissioner must ask to be supplied in connection with the exercise of any particular function, and the steps which must be taken to verify the accuracy of any information so supplied;
  - (c) the procedure to be adopted in conducting inquiries under section 54 of this Act, section 35 of the Goods Vehicles (Licensing of Operators) Act 1995 or any other enactment;
  - (d) the manner in which a traffic commissioner must or may publish his decisions;
  - (e) circumstances in which a traffic commissioner must consult some, or all, of the other traffic commissioners before exercising any particular function."

The distinction between "guidance" and "general directions" should be borne in mind here. Section 4C (2) provides for "guidance" to be given as to sanction or penalty, not "general directions". Section 4C(4) provides that before issuing guidance or directions the STC must consult a number of persons and bodies: the Secretary of State, Scottish and Welsh Ministers, other TCs (as thought appropriate), representatives of local government and transport authorities and relevant organisations representative of users and operators of transport services.

25. We were provided with Statutory Document No. 10 (November 2018). "The Principles of decision Making and the Concept of Proportionality" issued by the STC. This document contains both the STC's "guidance" and "directions" on the subject. It will be recalled that in the *CG Cargo* case, the UT cited para. 74 of the Statutory Document 10 as then current. They also quoted from that Document a grid of three levels of relevant conduct, bearing on disqualification:

"13) In addition, the Statutory Document indicates that Traffic Commissioners will consider conduct generally in the context of a regulatory starting point ranging from 'Low' at the bottom end, up to 'Severe' at the top end:

CONDUCT	REGULATORY STARTING POINT
Any conduct designed to strike at the relationship of trust between traffic commissioners and operators	SEVERE
Deliberate acts or omissions that compromise road safety and/or result in the operator gaining a commercial advantage	SEVERE to SERIOUS
Any conduct designed to mislead an enforcement agency or the Office of the Traffic Commissioner	SEVERE to SERIOUS"

26. Mr Heppinstall told us at the hearing that the paragraphs quoted in *CG Cargo* had been removed from the Guidance, showing that the STC was now eschewing any tariff on the question of disqualification. He submitted that the central point of the guidance is now to be found in paras. 58 and 61 of the Guidance as follows:

"58. An order for disqualification can only be made against the operator or a director/equivalent of the corporate body (but not for instance a company secretary) or a transport manager (under different provisions). Disqualification of an operator cannot be imposed without an order for revocation (and can be made following revocation of an interim licence) but an order for disqualification does not necessarily follow revocation. Disqualification is a potentially significant infringement of rights and the Upper Tribunal has indicated that whilst there is no 'additional feature' required to order disqualification it is not a direction which should be routinely ordered. There may be cases in which the seriousness of the operator's conduct is such that a traffic commissioner may properly consider that both revocation and disqualification are necessary for the purposes of enforcing the legislation. The provisions are in general terms, consistent with the concept of deterrence, but assessment of culpability and use of words such as penalty should be avoided. The case law indicates a general principle that at the time the disqualification order is made that the operator cannot be trusted to comply with the regulatory regime and that the objectives of the system, the protection of the public and fairness to other operators, requires that the operator be disqualified. A clear example of this is when an operator fails to attend a public inquiry after an application to adjourn the hearing has been refused.

...

61. Traffic commissioners are reminded that consideration of the period of any order for disqualification will always turn upon the facts of the individual case. The guidance from the Upper Tribunal reflects this. *"It is only on those rare occasions on which the facts are exactly the same that another decision is likely to be of any assistance on the question of the appropriate length of disqualification"*. It is clear that each case must be considered on its own merits and relies on the traffic commissioner to assess what is necessary to balance the objectives of the legislation including the protection of the public and ensuring fairness to the legitimate licensed transport industry against the potentially significant infringement of the licence holder's or individual's rights."

27. Popplewell LJ, pointed out during argument that the self-same paragraph which had been quoted as para. 74 of the Statutory Document in the *CG Cargo* case (see para. 19 above) now appears as para. 100 of the present Document in the Directions section. Mr Heppinstall's told us, as we understood on instructions, that the STC had clearly removed the passage from the guidance section. However, at our request, Mr Heppinstall undertook to enquire after the hearing as to what had happened about this paragraph in the Document since the *CG Cargo* case.
28. By letter from the Government Legal Department of 22 October 2020 the Court was told that the following information had been obtained from the STC:

"1. The quotation from Statutory Document 10 set out in the case of *CG Cargo* (page 134 of the Appeal Bundle, paragraph 12 of the decision) is now to be found at paragraph 100 of the current Statutory Document (page 91 of the Appeal Bundle). Searches indicate that

those words were only ever included in the "Directions" part of Statutory Document 10, as opposed to the "Guidance" section of that Document.

2. The "Directions" section of the document provides statutory directions which must be followed by traffic commissioners and members of DVSA staff deployed to the Office of the Traffic Commissioner. Those staff members prepare submissions recommending action to Traffic Commissioners and use the "Directions" to gauge how the various scenarios might be approached by a traffic commissioner. Paragraph 100 provides rough "starting points" as to when disqualification might be in contemplation.

3. Searches confirm that there has in fact been no change in that part of the Statutory Document. The text at paragraph 100 has always been there but did not form part of the Statutory Guidance section. The "Guidance" and "Directions" sections reflect the different powers given to the Senior Traffic Commissioner. The summary of the relevant case law in the "Guidance" did change. However, the term "guidance" found its way into the Upper Tribunal's decision in *CG Cargo*.

4. It remains the submission of the Secretary of State that the guidance to be given to Traffic Commissioners on length of disqualification is that provided at paragraph 61 of the Statutory Guidance document (page 82 of the Appeal Bundle). The indicative lengths of time given at paragraph 100 may well be useful starting points, but the Secretary of State continues to favour the flexible approach set out at paragraph 61.

5. The Secretary of State apologises to the Court for the confusion surrounding this issue."

The apology did not cover the inaccurate information provided at the hearing when the matter was initially raised by the court at the hearing of the appeal. Clearly, there was and is confusion caused by all this, which remains to be addressed.

29. In my judgment, because of the distinction drawn between "guidance" and "general directions" in PSVA 1981 s. 4C (1), it is to the *Guidance* section of the document that TCs must turn in exercising powers as to penalty or sanction. That section of the document provides no definitive "steer" as to the length of any disqualification period. The directions section appears to be aimed at staff exercising delegated functions. Save for the short passage in paragraph 2 of the letter of 22 October 2020, we were not informed as to the circumstances in which staff members might have to deal with issues of disqualification and in which, therefore, they would have to have regard to para. 100. The TCs cannot be fettered by what appears in para. 100 in making their own decisions in individual cases, but the thinking that appears in the paragraph cannot be put entirely out of mind as part of the relevant background. It certainly influenced the UT in the *CG Cargo* case and they can hardly be faulted in being so influenced.



## PART TWO – Chronological List of Decisions

This list combines the pre-2000 list in the earlier Digest with the new list which was prepared for the provision of key-words in the database. For this purpose, certain words are selected as lead-words and italicised. Whilst every decision from 2000 is available on the website, it should be noted that not every decision is descriptively key-worded. This is apparent from the lack of italics, although such cases are in the sub-category “miscellaneous”. The software only permits two key-words per case and it is regretted that the detail given is of limited value; but it is hoped that the details of title, dates of hearing and decision, chairmen and key-words will enable the list to be used as a check-list. Of course, entries in Part One of the Digest are under subject headings and should also assist identification of relevant decisions: all such entries are hyperlinked as set out in the Introduction. Since the decisions are available on the website the titles of appeals from 2000 onwards are not necessarily given in full. Note that for the years 2000-2002 the case number preceded the year number: from 2003 onwards this was reversed. However, in Parts One and Two of the Digest the year precedes the appeal number throughout, as is the position when searching for a decision on the website. As explained earlier, when using the search facility it is necessary to put four numbers for the year and three for the appeal e.g. for 2004/23 RJ Mortimer it is necessary to enter 2004 in full as the year and then 023 for the case number. Earlier decisions are available from the Tribunal office. Prior to 2000 a prefix number was given for each year:

W	1985	Z	1988	C	1991	F	1994	J	1997
X	1986	A	1989	D	1992	G	1995	K	1998
Y	1987	B	1990	E	1993	H	1996	L	1999

**Key-Words**

**The following Keywords were used in relation to Traffic Commissioner appeals heard between 2000 and 31<sup>st</sup> December 2015.**

<i>Costs</i>	<i>Miscellaneous</i>
<i>Decision – inadequate reasons</i>	<i>Notice of issues and evidence</i>
<i>Directors duties</i>	<i>Operating centre</i>
<i>Disqualification</i>	<i>Procedure</i>
<i>Drivers hours and tachographs</i>	<i>Professional competence</i>
<i>Financial standing</i>	<i>PSV</i>
<i>Human Rights</i>	<i>Repute</i>
<i>Impounding</i>	<i>Suspension</i>
<i>International issues</i>	<i>Termination by non-payment or withdrawal</i>
<i>Maintenance</i>	

These Keywords should be used in relation to all appeals heard after 1<sup>st</sup> January 2016.

**REVISED LIST OF RELEVANT KEY-WORDS**

**General Keywords**

<b>Code</b>	<b>First Level Key-word</b>	<b>Second Level Key-Words</b>
14.13	European Union Law	Other
17.12	Human Rights Law	Other
34.1	Tribunal Procedure & Practice	Evidence
34.2	Tribunal Procedure & Practice	Fair hearing
34.12	Tribunal Procedure & Practice	Tribunal Practice
34.14	Tribunal Procedure & Practice	Other

**100. Transport - Traffic Commissioner and DoE (NI) Appeals,  
(First level Keyword)**

<b>Code</b>	<b>Second Level Key-word</b>	<b>Suggested Third Level Key-Words</b>
100.1	Applications	
100.2	Call-up letters	Notice of Issues Giving Notice
100.3	Establishment	Operating Centres Environmental Issues
100.4	Repute and Fitness	Burden of Proof & Approach Convictions Unfair Competition
100.5	Restricted Licences	Fitness Finance
100.6	Financial Standing	Purpose 'Having Available'
100.7	Professional Competence	
100.8	Transport Managers	Change Position
100.9	Public Inquiries & Impounding Hearings	Notice Burden of Proof Adjournments Bias
100.10	Discretionary Issues	Drivers Hours & Tachographs Failure to Respond Material Change
100.11	Regulatory Action	
100.12	Revocation, Suspension & Curtailment	
100.13	Disqualification	Approach Directors Cancellation or Variation Directors
100.14	Termination by law. Withdrawal or Surrender	
100.15	Public Service Vehicles	Stretch Limos

		Penalties Cancellation of Registered Services
100.16	International issues	International carriage Cabotage Combined Transport
100.17	Directors	Definition Collective Responsibility Corporate Veil
100.18	Impounding	Right to apply for return Hearings Burden of Proof Approach Knowledge Procedure
100.19	Decisions & Reasons	Proportionality Reasoning Balancing Exercise
100.20	Other	

## Part 2: Chronological List of Decisions

### 1985-1999 List from previous Digest

#### 1985

- W1 Troup J
- W3 Morrison Herbert
- W4 Nightingale RA ( T/A Anglia Fruiterers)
- W7 Thrapston Warehousing Company Ltd
- W8 Bown RG ( T/A RGB Transport)
- W9 Borough of Haringey v. AT Michli
- W10 Swain PA (Waterloo) Limited
- W11 Brimley RG ( T/A Retailset)
- W12 Cryer J & Sons Ltd
- W13 Carryfast Ltd
- W14 Chalker R (The Potato Man) Ltd
- W15 "See You" Transport Ltd
- W16 British Road Services Ltd ( T/A BRS Southern Ltd) Canterbury v. City Council & Canterbury City Council v. BPS Southern Ltd
- W17 Surrey Heath Borough Council v. NFT Distribution Ltd
- W18 Geddes Andrew
- W19 House M & G
- W21 Basildon Council v. Rees Haulage
- W22 Constructive Ltd
- W23 D&A Transport Ltd, F Burns (Transport) Ltd and JT Greenwoods Transport Ltd v. Lancashire County Council and South Ribble Borough Council
- W24 Hunt GB
- W25 Clarityrole (T/A Nottingham Service Contractors)
- W26 Firemeadow (T/A B Wren & Son)
- W30 Strathkelvin District Council v. Fife Forwarding Co Ltd

#### 1986

- X1 Smith C ( T/A A1 Demolition)
- X2 Cowan Bros (Haulage) Ltd
- X3 Furrowstone Limited
- X4 Troup John
- X7 Bradstep Limited
- X8 R Rudge & Sons Limited
- X9 Trevis JF and AJ ( T/A John Trevis & Sons)
- X10 West Lancashire DC v. Ken Abram Ltd Ken Abram Ltd v. West Lancashire DC
- X11 Lodge DH (T/A Tiptree Union Haulage) v. Colchester Borough C'l
- X14 Darrens Ices Limited
- X15 Turbostar Limited
- X16 Martley Landscapes and Driveways
- X17 Brown JH & Brown CF (T/A Fox Lane Metals) v. Hart District C'l
- X17 Sunnyside Removals v. Hart D. C.
- X25 Surrey CC & Surrey Heath BC v. Express Hay & Straw Services
- X26 West Lancashire DC v. Dures Brothers
- X27 Wellingborough BC V. W Brown (Leather Goods)
- X28 Moorhead Kenneth James

- X29 Kirk Brothers Ltd v. Macclesfield BC
- X30 Atkinson W R (Transport) Ltd
- X31 Kitchen RH Ltd
- X34 Jury RG and MT (T/A R&G Transport) v. Devon County Council
- X35 Tarnbrook Limited

**1987**

- Y2 Daventry District Council v. Wrights Road Haulage
- Y3 Eskett Quarries v. Dr B Courtney
- Y5 Hague CE & B (Platt Common) Ltd
- Y6 Expo Removal
- Y7 Mather JB (T/A Easyway Bus)
- Y9 Clayton Jones Transport services; Clayton Jones Tours & Shamrock Private Hire Services (Newport) Ltd
- Y11 Day Henry (T/A Happy Day Tours)
- Y12 Mid Suffolk DC v. A Dowell, Junior (T/A A Dowell & Sons (Bury))
- Y13 Lunar Module Limited
- Y14 Hastings and District Transport Ltd
- Y17 Scorpio International Ltd v. Lancashire CC and South Ribble BC
- Y19 Autojade Limited (T/A Exeline Travel)
- Y24 Clayton Jones Coach Tours
- Y25 Wessex Construction & Plant Hire Ltd
- Y26 Kirklees Metropolitan C'l v. Geoffrey Beaumont
- Y27 Morris Stephen and Morris Thomas
- Y28 Chesney PT (T/A C & H Carriers)
- Y29 Bonner Terence Keith (T/A TK Bonner Transport)
- Y31 Tower Hamlets (LB of) v. London Tipping Services
- Y32 Maun International Coachway Ltd
- Y37 DFC International Ltd & DF Collison -& JM Collison
- Y39 Jones Trevor (Haulage Contractor)
- Y41 Willmott David
- Y42 Campbell John (T/A CampbellCoaches)
- Y43 Richmond Mrs AS (T/A R Richmond)
- Y45 Khami Metals Company Limited v. Basingstoke and Deane B C
- Y46 Epping Forest D C v. PB Freeman
- Y47 Camm A Ltd
- Y48 Bayles Geoffrey (T/A Geoff Bayles Transport)
- Y49 Weekway Limited
- Y51 Lincoln Haulage Limited

**1988**

- Z1 Goldsmith F (Sicklesmere) Limited
- Z2 Bown RG (T/A RB Transport) v. Leicester C C et al
- Z3 Balch AJ (T/A AJB Motor Services) v. Hampshire Constabulary
- Z5 NFT Distribution Ltd
- Z8 Sage AF
- Z10 Troup John
- Z11 Monmouth DC v. F, DM & FA Baldry(T/A Greenlands Transport)
- Z12 Griggs RI Transport v. Canterbury C.C.
- Z13 Benbay Civil Engineering Group Ltd v. Horsham D C'l
- Z15 Daniels N (T/A/ Daniels Transport) v. Canterbury City Council

- Z16 Bocking FH (T/A Red ways Coaches)
- Z19 Gilbert Chapple Haulage Ltd
- Z20 County Travel (Leicester) Ltd
- Z22 Ceasar Ca v. Surrey C C
- Z23 Brown AH and MJ (T/A Harry Brown)
- Z24 Ken Lane Transport Limited
  
- Z27 Van Hee Transport Ltd
- Z28 Dean Christopher John (T/A Dean Haulage)
- Z32 Wear Valley D C v. RH Linsley (T/A Linsley & Son)
- Z34 Duncan Lacey & Bros Ltd V. Mid Sussex D C et al
- Z37 Ings Transport Ltd v. New Forest D C et al
- Z39 Martin WH Ltd v. Mr & Mrs Forman et al
- Z40 Fezcourt (Felixstowe) Ltd v. Suffolk Constabulary
- Z44 St Helens Metropolitan B C v.G Moon (T/A Moon Haulage)
- Z46 Transag Haulage Ltd v. L Mayers et al
- Z47 Edwards NM (T/A N Edwards Transport)
- Z48 Grace Christopher

### **1989**

- A3 Narwood Limited
- A5 Becksid e Haulage Limited
- A12 Essex C C v. Barrie Stone
- A17 Gant Norman Roy
- A20 St Ivel Limited
- A22 Middlesbrough BC v. TPM McDonagh (Civil Engineering) Limited
- A25 Crone NC and Crone DM v. Lea Valley Regional Park Authority
- A26 JHP Transport V. Essex Police
- A27 Mair Transport (Tilbury) Ltd v. Essex Police
- A29 Surrey C C and Spelthorne B C v. DC Morris
- A30 Campbell J (T/A Cairnapple Coaches)
- A32 EC Transport (Wimborne) Ltd
- A37 Emmett R (T/A Emmfield Coaches)
- A38 Hollingsworth SS and S (T/A Otterspool Travel & Day Nursery)
- A39 Lambkin RC (T/A Lambkin's Coaches)
- A41/1 Shamrock Private hire Services (Newport) Ltd
- A41/2 Rhondda Travel
- A41/3 CF & IE Jones (T/A Clayton Jones Coach Tours)
- A41/4 Celtic Connection Ltd

### **1990**

- B2 Houseman L & M (T/A L & M Waste Disposal Services) v. City of Bradford Met. Ccl.
- B3 Williams Glyndwr John (T/A Glyn Williams Travel)
- B7 Torfaen B C v. Collingbourne Contractors (Cwmbran) Ltd
- B10 George Allinson (Transport) Ltd
- B12 Hetherington A V. Gateshead Metropolitan B C
- B14 O'nion PG ( T/A AMD Haulage)
- B19 Lambert K (T/A Kevin Lambert's Coaches)
- B20 Parker DJ and Bird DJ (T/A Chilton Grounds Farm)
- B23 Crosskeys Coach Hire Ltd (T/A Glyn Williams Travel)
- B24 Hi-line Transport Ltd

- B25 Shamrock Private Hire Services (Newport) Ltd
- B26 Mightyhire Ltd
- B27 Portors S (Haulage) Ltd
- B29 Lincoln City Transport Ltd
- B30 East Hertfordshire D C v. BW Pallett
- B33 Evans Coaches Ltd
- B35 Lane Gareth John (T/A Gary's of Tredegar)
- B39 Dulnain Bridge Plant Ltd
- B40 Russell D (T/A Amberline Taxis)
- B41 Price DC and Price MW (T/A Cabs Padarn)
- B49 L B of Havering v. E Hawkes (Ceramic Tiles) Ltd
- B52 Simms J (T/A Ilkeston Haulage and Storage) v. Nottinghamshire C C
- B53 Jebb JJ ( T/A Jebb Transport)
- B54 Oliver PGM and Oliver SE (T/A C&F Industrial)

**1991**

- C2 Target Travel (Coaches) Ltd
- C3 O'Donovan (Waste Disposal) Ltd
- C5 Simms J (T/A Ilkeston Haulage and Storage) v. Nottinghamshire CC et al;  
Sherwood DW (T/A Sherwood Transport Services)
- C7 Jeal M (T/A Panther Buses)
- C8 LC Skips Ltd
- C9 Surrey CC and Mole Valley DC v. N Marshall Ltd
- C10 Surrey CC and Mole Valley DC v. N Marshall Ltd
- C13 St Helen's Metropolitan BC v. JOS Millican (Penton) Ltd
- C14 Williams BL (T/A/ European Roadways)
- C16 Chambers JK
- C17 Lambkin RC (T/A Lambkin's Coaches)
- C19 Vaines C & Sons Ltd
- C20 J Irlam & Sons Ltd
- C21 Waveney Coaches Ltd
- C23 Inverclyde Transport Ltd
- C27 Jones P (T/A JE Jones & Sons)
- C31 Newton Mr and Mrs (T/A Melrose Coaches)

**1992**

- D1 Lupton Brothers Ltd
- D3 Johnston RI (T/A R Johnston Construction)
- D4 Road Haulage Association v. John Dee Ltd
- D5 Enterprise & Silver Dawn Bus Co
- D7 Pilbeam NJP Transport
- D8 Bradford Cargo Terminal Ltd
- D12 HSW Timber Co Ltd
- D13 Harris Coaches (Summer Court) Ltd
- D16 Macpherson & Colburn Ltd
- D17 Road Equipment Rental Ltd
- D21 Cobden LR
- D23 Colledge CT (T/A CT Transport Services)
- D25 Hobson Bros (Refractories) Ltd
- D30 O'Sullivan DF
- D31 S & P Plant Contractors Ltd
- D32 Crewe & Nantwich BC v. A Yoxall (T/A Yoxall Farm Feeds)
- D33 Craven RF (T/A Cravens Transport)



- D34 Baldry HE Ltd v. Surrey C C and Tandridge D C
- D36 Cooper AG and Rooney AJ (T/A CT Supplies)
- D37 Wilton Contracts Ltd
- D38 Aldridge J
- D41 Adam JJ (Haulage) Ltd

**1993**

- E1 Northavon D C v. M&N Plant Ltd
- E2 Brian Rust Haulage v. Norfolk C C et al
- E4 Middleton Carstone Ltd
- E3 Sayani RF (T/A Salimar Travel)
- E7 Hull MA (T/A Hullmark Courier Services)
- E11 Shaw G (T/A Moorland Travel) v. PMT Ltd
- E13 Ward R (T/A B & I Travel)
- E14 Yuill & Dodds
- E16 Basingstoke and Deane BC v. AG & D Bayliss (T/A Bayliss Tspt)
- E18 Proculture Plants Ltd
- E19 Harber Transit Co Ltd
- E27 Moores
- E30 Nagle RMP (T/A Cable Transport)
- E31 Collingbourne Contractors Ltd
- E34 European Express Cargo Ltd
- E36 Smith RB & D
- E40 Featherstone L, Featherstone B and Hammond K
- E41 Roedemer GA

**1994**

- F2 Sprigcourt Ltd
- F3 Keen SJ (T/A Keen Heavy Haulage)
- F5 Veertran Ltd
- F7 Taylor JE Ltd
- F8 Holley PI & RM (T/A Holley)
- F10 Brooker MJ & RD (T/A Brooker Transport)
- F12 Miller FR Ltd v. Surrey C C and Guildford B C
- F16 Godfrey RH ( T/A Blackhurst Wade) v. Essex C C
- F17 Rogers WP (T/A Rogers Transport)
- F18 Rooney JA
- F19 Janaway J (T/A Janaway Farms Ltd)
- F20 Road Haulage Association AC & TM Dale (T/A Hambleton Tspt)
- F21 Temple Ad (T/A Temples Transport)
- F23 Moore S (I/a S M Trucking)
- F24 Eye Valley Transport Co Ltd
- F26 Winn Gregg (T/A Gregg Winn Family Grocer)
- F30 Nelson J(T/A Nelson Taxi Service)
- F31 Singh B (T/A GBD Reproduction Furniture Ltd) v.E Northants
- F32 Laser International Transport Ltd
- F33 Strutt TF & TA (T/A TFS Tipping) v.Surrey C C and Runnymede B C
- F34A Bayliss AG & D (T/A Bayliss Transport) v Basingstoke & Deane
- F34 B C v. AG & D Bayliss (T/A Bayliss Transport)
- F40 Perth Carriers Ltd
- F42 McKay MPA (T/A Dalbeg Coaches)
- F43 Croydon Bus & Coach Co Ltd (T/A Ranger Travel)

- F46 Haley William & Partners (T/A WD & A Haley Transport)
- F47 London Haulage Contractors Ltd
- F49 Road Haulage Association v. Bulmans Bulk & Haulage Ltd and Bulmans (Penrith) Ltd
- F53 MCG Landfill (Contractors) Ltd v. Surrey C C

**1995**

- G2 Burns Mr & Mrs DW (T/A Burns & Sons)
- G5 John Shaw & Son (Silverdale) Ltd (T/A Shaw Hadwin)
- G6 Morris CA (T/A Elite Cars & Travel)
- G14 Ashvale Transport Ltd
- G16 Deadman Transport Ltd v. Canterbury City C'l
- G19 Drummond TG (T/A Nairbank Scaffolding Services)
- G20 Turriff Transport Consultants Ltd
- G22 Davidson & Wilson Ltd
- G23 Wynter-M Transport & Trading Ltd, James Moore, Paul Moore
- G24 Berkshire Royal County of v. BJ Gibson
- G26 Thomas Muir (Haulage) Ltd
- G28 Limebourne Travel Ltd
- G31 Lewis SG
- G32 Mcmillan AJ (T/A Anthony's Coaches)
- G34 Argyll & Bute Council
- G37 Chambers Waste Management v. Surrey C C
- G38 Wynne K (T/A Wynne Haulage)
- G41 Cassar D (T/A DC Transport)
- G43 Stokes Removals Ltd
- G43 Graham RA (T/A Roy Graham International)
- G45 Economic Excavations Ltd
- G46 DN & AK Hosie
- G47 Winspear ML (T/A Win -For -Far Transport)
- G48 Tattersall PD
- G49 Mckenna AG & H (T/A Mullover Ltd)
- G50 Linhart H (T/A Transhaul)
- G51 Co-operative Wholesale Society Ltd v. Sevenoaks D C
- G52 Coakley E (T/A E & P Coakley Coaches)

**1996**

- H9 British Benzol Plc
- H10 Scott P (T/A Transcare)
- H11 Rushmoor Bc v. MKG (Food Products) Ltd
- H12 Grant A (T/A Sapphire Mini Coaches)
- H19 New Forest D C v. MR & TG Elvy
- H22 Hoskin DE (T/A Falmouth Boat Transport)
- H23 Mounthooly Transport Ltd
- H24 British Benzol Ltd
- H26 Styrene Packaging & Insulation Ltd
- H27 Gardiner DW (T/A Silver Choice Coaches)
- H28 Heal PJ (T/A Weston Plant & Tipper Hire)
- H29 Perry ME (T/A Mike Perry Transport)
- H32 Goldthorpe P (T/A P & R Coaches)
- H33 Semmence H & Co Ltd

- H34 Brake GW (T/A GB Haulage)
- H35 Taylor J & Partners
- H36 Greenwood A D
- H37 Miller FR
- H38 Lewis Land Services Ltd
- H39 Thomas KSH (T/A Ivanhoe Coaches)
- H40 Georgiades P J
- H41 George P International Ltd
- H43 Cert Plc
- H44 Skinner P J (T/A Skinners Transport)
- H45 Constable D
- H46 Browne M A
- H47 Anderson A J (T/A A J Anderson)
- H48 Win-for-far Travel and Transport Services Ltd
- H49 Docklands Waste Disposal Ltd

**1997**

- J1 Thomas Muir (Haulage) Ltd
- J4 Ketchen A (T/A Belleza Coaches)
- J5 Win-for-far Travel and Transport Services Ltd
- J6 Killornan Demolition Ltd
- J8 Surrey County Council v.JA Ford (T/A Ford Contractors)
- J9 Strath Paving
- J11 Surrey C C v.Roke M R E (T/A Frosbury Sawdust and Shavings)
- J12 Robinson R C Haulage Ltd
- J13 Banham GA
- J14 O'Brien TJ
- J16 Taylor J A & Partners
- J18 Ace Freight Limited
- J20 Slorach I & Baker A (T/A A B Couriers)
- J21 Power DV (T/A A-2-B Rubbish Clearance)
- J22 Simpson A
- J23 Surrey CC & Guildford BC v. Greenwood A (T/A Greenwood & Co)
- J24 Surrey CC & Guildford BC v. Mallins MS & Smith CJ (T/A C&M Haulage)
- J26 Duragate Limited
- J27 Bakewell P (T/A P. Bakewell Haulage)
- J28 Feakins RJ (T/A Feakins Oil Recoveries)
- J31 Graham A B (T/A Grahams of Gretna)
- J37 Galloway Refrigerated Transport C (T/A Zion Coaches)
- J39 Benney TR
- J42 Starr Roadways Limited

**1998**

- K2 Elliott L & Lewis C (T/A Zion Coaches)
- K7 Fuggles of Benenden
- K10 Charlton S A & Spencer M A (T/A Weybus)
- K11 Clifford George Walker
- K12 Nicol J S (T/A United Radio Cabs)
- K13 Conwy County BC v.Murphy S A (T/A Rapid Removal & Storage)
- K14 Harris J E (T/A Harris Transport)
- K15 Randall & Co Ltd (T/A Durham Transport Services)
- K17 Megatrade Limited

- K22 GAD Howells & RA Draper (T/A Sunburst Leisure Ltd)
- K25 Rixon M H (T/A James Transport Services)
- K26 Central Scotland Recycling Co Ltd
- K27 Muirhead Brothers (Lesmahagow) Ltd
- K28 F Sherwood & Sons (T'spt) Ltd, J Curtlidge & A Sherwood
- K30 RA Drury (T/A King Automotive Systems) Ltd
- K31 BW & ER Gregg (T/A Brylaine Travel)
- K33 Craig T Colledge (T/A CT Transport Services)
- K35 Derek Bertram
- K37 David Alfred Trucks
- K40 APPS Lts
- K41 W Wilson (T/A Glen Coaches Ltd)
- K42 Ribert Tompkins (T/A Tompkins Travel)
- K43 MK Byrne (T/A M & L Courier Service Ltd)
- K46 MT Cooper (T/A MT Cooper Demolition)
- K47 Simon Thompson & Terry Gillam (T/A S & T Roofing)
- K48 Nicos Tsokas
- K50 L Hussain & M Arshxd
- K51 Hughes Waste Management
- K52 John James Smith (T/A Smith International)

**1999**

- L2 M Smith (T/A Mike Smith Transport)
- L3 Messrs H & R Gray
- L6 Mark Lewis & Michael Glastonbury (T/A Direct Timber)
- L7 Headlight Bus Company
- L9 T J Hunt (Contracting) Ltd
- L11 Malcolm Stonehouse
- L12 MRD Jude (T/A D G Coach Travel)
- L13 J E Taylor
- L14 D I Semp (T/A Curtains of Quality)
- L18 M K Byrne (T/A M & L Courier Services Ltd)
- L21 Caroline M Wilson (T/A Kenmore Coaches)
- L22 John William Hobbs (T/A Hemel Reproductions)
- L23 Richard S Watson (T/A Chapel Roofing)
- L25 R H Coalter (T/A HMC International Transport)
- L27 Steven John Dean
- L28 Midland Bluebird Ltd
- L29 A R Williams (Properties) Ltd
- L31 Shane Murphy (T/A Rapid Removals & Storage)
- L32 A Williams (T/A Williams International)
- L33 A Khan (T/A Khawaja Poultry)
- L34 Horsham D C v. Norman Marshall
- L35 Shaun Standen
- L36 J E Taylor
- L37 Norman Marshall Ltd
- L38 J & K Brennam (T/A Brennan Paving Co)
- L39 Stagecoach Cambus Ltd
- L40 Graham Ing (T/A Sureway Travel)
- L41 West Sussex CC v. Norman Marshall
- L43 R & M Cooper (T/A Dennis's Coaches & Travel)
- L44 Ribble Motor Services Ltd

- L45 Spencer Wood Demolition
- L47 Raven Skip Hire Dewsbury
- L48 L Wardle Transport
- L49 Pennington Haulage
- L50 Deospeed International Ltd
- L51 J B Weaver (T/A John Weaver (Machinery Transport))
- L53 Bryan J Nunn Haulage Ltd
- L54 Mrs Christine Andrews
- L55 A A Griggs & Co Ltd
- L56 Alison Jones (T/A Jones Motors et al)
- L57 David McLoughlin (T/A Cadet Transport)
- L58 Gary Littten (T/A Junction Autospares)
- L59 Ian Cocklin (T/A Hampton Coaches (Westminster))
- L61 L N Gale (T/A Bosithow Farm Mushrooms)
- L62 Georgina Allan (T/A Allan Haulage)
- L64 George Thirwell & James Callister (T/A Aspatria Skip Hire)
- L66 BLC Turner (T/A Greenway Travel)
- L67 T Kyriacou (T/A Roadway Transport)
- L68 Tuncay Silahsor (T/A Civan Transport)

## 2000

- 1/2000 R Gray Senior, RA Gray & JC Gray (T/a H&R Gray v. Colin & Fiona Graham)  
HGV – HC – 15.2.00 – 25.2.00 – Dismissed  
*Operating centre* – suitability – s.31 review  
Transcript – challenge to accuracy – suggestion that part was “off the record”
- 2/2000 Grifpack Limited  
HGV – JM – 22.3.00 – 27.3.00 – Remitted  
*Procedure* – operator failed to appear – PI heard in absence – TC not informed of written application to adjourn
- 5/2000 Marilyn Williams (T/A Cled Williams Coaches)  
PSV – JM – 16.5.00 – 25.5.00 – Allowed  
*Notice of issues and evidence* – call-up letter – Operator taken by surprise
- 6/2000 AJ Cassels  
HGV – HC – 25.4.00 – 15.5.00 – Remitted  
*Disqualification* – need for procedures and detail of order to be addressed.  
*Termination by non-payment or withdrawal* – exceptional circumstances in s.45(5) for extending not limited to inadvertent non-payment – operator not entitled to allow licence to lapse so as to avoid adverse finding
- 8/2000 Montague (Euro) Limited (T/A A1 Buses)  
PSV – HC – 26.4.00 – 15.5.00 – Dismissed  
*Procedure* – conduct of PI – TC entitled to stop operator from interrupting
- 9 & 10/2000 JC Stevenson & TE Turner (T/A J&T Transport) and Thomas Mchugh v. Department of the Environment, Transport and the Regions  
HGV – HC – 26.4.00 – 15.5.00 – Dismissed (9) – Remitted (10)

- Repute* – convictions – mandatory loss – meaning of Schedule 3, 1995 Act – meaning of 1999 Goods Vehicles Operators (Qualifications) Regs in giving effect to 1998 Directive – definitions of ‘serious offences’ and of ‘road transport offences’ – “more than one conviction” may refer to same day
- 12/2000 Alansway Coaches  
PSV – JM – 17.5.00 – 25.5.00 – Dismissed  
Maintenance – adequacy of reasons
- 13/2000 M&S Transport  
HGV – JM – 17.5.00 – 25.5.00 – Allowed  
Disqualification set aside – No additional feature
- 14/2000 Reids Transport Limited  
HGV – HC – 3.8.00 – 8.9.00 – Remitted  
*International issues* – vehicles licensed in both Scotland and Ireland  
*Operating centre* – where normally kept  
Notice of issues and evidence – call-up letter – point not mentioned
- 15/2000 D Murphy (T/A Ashley Coaches)  
PSV – HC – 31.7.00 – 5/9/00 – Dismissed  
*Repute* – general – conviction for loan of disc
- 16/2000 Group Taxibus Limited and Richard Matthews  
PSV – HC – 31.7.00 – 5.9.00 – Allowed  
PSV – buses – local services – breach of s.6 of 1985 Act may constitute “conduct” under Schedule 3 of 1981 Act and thus be basis for finding of loss of *repute* under s.17 of the 1981 Act – definitions – plying for hire – need for balancing exercise – must be proportionate  
Decision – inadequate reasons  
Notice of issues and evidence – taking into account matters which TC said would not consider Operator no opportunity to deal with
- 18/2000 Euroline Transport Limited  
HGV – JB – 21.11.00 – 15.12.00 – Dismissed  
*International issues* – use of British vehicles in Greece to avoid Greek control – Meaning of Community Authorisation – need to comply with law of member state which has granted licence  
*Operating centre* – where normally kept – in England but never used – TM an appointment of convenience – failure to comply with undertakings on maintenance or drivers’ hours rules  
Financial standing – burden on operator to establish
- 22/2000 ET Benson Precision Engineering Limited v. Surrey County Council  
HGV – HC – 1.8.00 – 5.9.00 – Allowed  
*Procedure* – joinder of parties – discretion by TC and Tribunal – advantage of hearing arguments on both sides  
*Operating Centre* – no material change in circumstances – description in lease remained accurate
- 24 & 25/2000 Arriva Tees & District Limited and Arriva Teesside Limited  
PSV – HC – 13.6.01 – 26.6.01 – Allowed(25/2000) – Dismissed (24/2000)

- PSV* – buses – local services – direction made under s.26 of 1985 Act but size of sample too small to support failure to comply with s.6  
– “Window of tolerance” – meaning in light of CA decision in Ribble case  
– determination under s.111 of 1985 Act – see Chapter 17 – Appeals from Tribunal
- 26/2000 Maddern Transport Limited  
HG V – HC – 1.8.00 – 5.9.00 – Dismissed  
Maintenance and financial standing – adequacy of reasons – Tribunal’s approach
- 27/2000 PJ Brown (T/a Leroy Coaches)  
PSV – HC – 1.8.00 – 5.9.00 – Dismissed  
*Repute* – general – use of out of date discs – deliberate attempt to mislead – adequacy of reasons
- 28/2000 Excellent Connections Limited  
PSV – HC 3.8.00 – 8/9/00 – Allowed/remitted  
*PSV* – definitions – use of private hire cars at Edinburgh Airport – TC accepted legal advice from Council that operator would be in breach – but such advice was selective and TC not properly directed – ought to have given operator benefit of doubt
- 29/2000 Harveys Coaches Limited and John Hardie  
PSV – HC – 3.8.00 – 8.9.00 – Dismissed  
*PSV* – buses – local services – dispute between operators – alleged intimidation – breach of s.6 of 1985 Act not restricted to sanctions in s.26 – TC may also revoke under s.17 of 1981 Act  
*Disqualification* – need self-evident
- 32/2000 T Saunders Sons Limited  
HG V- JB – 3.10.00 – 24.11.00 – Remitted  
*Operating centre* - suitability – increase in numbers – complaints of noise – imposition of conditions – power to do so under s.23 of 1995 Act considered – need to give opportunity for representations on effect of conditions on business under s.23(4)
- 34/2000 Solent Travel Limited  
PSV – MB – 14.9.00 – 10.10.00 – Allowed  
*Notice of issues and evidence* – call-up letter – consideration of reg.9 of 1995 PSV Regs  
– Service of notices under 1981 Act – sufficient if sent to proper address  
– meaning of para 19(1) of 1995 PSV Regs  
*Procedure* – appeal – contents of bundles
- 35/2000 Continental Road Haulage and Warehouse Limited  
HG V – JB – 3.10.00 – 24.10.00 – Dismissed  
*Operating centre* – where normally kept – operator ceased to trade so vehicles no longer kept at operating centre – material changes as TC not informed of disposal of vehicles
- 36/2000 Chris Clarke & Co  
HG V – JB – 3.10.00 – 24.10.00 – Dismissed  
*Operator ceased to trade* – material changes not notified to TC – loss of *repute*



- 41/2000 Hi Kube Transport Limited  
HGV – JB – 21.11.00 – 15.12.00 – Dismissed  
*Repute* – general – false statement in application for new licence – “went to heart of system” – proportionate
- 42/2000 Alexander John Cassels  
HGV – HC – 4.1.01 – 15.1.01 – Allowed  
*Disqualification* – allegation of unlawful operation not considered – disproportionate
- 45/2000 Martin Jolly Transport Limited  
HGV – HC – 17.11.00 – 8.12.00 - Dismissed  
*Drivers’ hours and tachographs* – meaning of undertakings to make arrangements to observe – numerous convictions of drivers – knowledge of directors  
HGV – HC – 4.1.01 – 15.1.01 – Dismissed
- 46/2000 Armondi Limited  
*International issues* – use of non-EC qualified drivers in UK – unlawful operations – revocation
- 48/2000 John Ceri Evans (T/A J&E Evans)  
HGV – JB – 3.10.00 – 9.10.00 – Dismissed  
Maintenance – undertakings concerning maintenance and overloading breached  
*Procedure* – joinder of issues – separate drivers’ conduct inquiries
- 51/2000 Express Deliveries By Roadrunners Merseyside Limited  
HGV – JB – 19.2.01 – 12.3.01 – Allowed  
Operating centre – suitability – accident free history – TC decision plainly wrong
- 55/2000 Michael Leslie Smith (T/a Mike Smith Transport)  
HGV – HC – 4.1.01 – 15.1.01 – Allowed  
*Repute* – convictions – whether “serious” or for a “road transport offence” – failure to disclose – when spent – meaning of para.5(2), Schedule 3 of 1995 Act
- 57 & 62/2000 Yorkshire Rider Limited And First Bristol Buses Limited v. Department of the Environment Transport and the Regions  
PSV – HC – 8.1.01 – 22.1.01 – Allowed  
*PSV* – buses – local services – size of sample – window of tolerance – special case of congestion – need for TC to evaluate and to give reasons for rejecting evidence  
*Decision* – inadequate reasons  
Maintenance – improvement after interview not taken into account
- 58/2000 Gurdev Singh  
HGV – HC – 8.1.01 – 22.1.01 – Allowed  
Financial standing – ground for revocation not properly specified
- 59/2000 Dolan Tipper Services Limited  
HGV – HC – 4.1.01 – 15.1.01 – Dismissed  
*Repute* – general – non-disclosure of overloading conviction in application

*Professional competence* – failure to give notice to TM pursuant to para.15,  
Schedule of 1995 Act – directory not mandatory

- 63/2000 Reids Transport Company Limited  
HG V – JB – 19.1.01 – 20.2.01 – Allowed  
*International issues* – vehicles registered in Ireland in order to gain excise  
duty advantage  
*Operating centre* – where normally kept – whether “normally kept” at  
operating centre in Scotland
- 65/2000 AM Richardson (T/a DJ Travel Consultants) v. Department of the  
Environment Transport and the Regions  
PSV – HC – 23.4.01 – 11.5.01 – Dismissed  
*Repute* – general – conflict of evidence over responsibility for false statements  
on inspection records – burden of proof on operator – balance of  
probabilities not criminal standard  
*Human rights* – positions of TC and Tribunal
- 66/2000 DL Eccles & J Heads (T/a Eurohaul)  
HG V – JB – 19.2.01 – 16.3.01 - Dismissed  
*Termination by non-payment or withdrawal* – non-payment of vehicle excise  
duty for vehicles used internationally as a protest  
*Repute* – general

## 2001

- 1/2001 RC Milton (T/a Bob Milton)  
HG V – HC – 29.3.01 – 11.4.01 – Dismissed  
*Financial standing* - burden of proof.  
*Procedure* – appeal – procedure – failure to attend
- 3/2001 Sumo Overland Direct International Transport Limited  
HG V – JB – 20.2.01 – 19.3.01 – Dismissed  
*Repute* – convictions and non-disclosure
- 5/2001 George Mair Mckay Limited  
HG V – HC – 29.3.01 – 11.4.01 – Dismissed  
*Repute* – convictions – drivers’ hours and tachographs – call-up letter – notice  
of disqualification
- 6/2001 M-Line Limited  
HG V – HC – 15.3.01 – 30.3.01 – Varied  
*Directors’ duties*  
*Disqualification* – detail of orders
- 7/2001 Alkaline UK Limited  
HG V – HC – 15.3.01 – 30.3.01 - Varied  
*Drivers’ hours and tachographs* – meaning and effect of undertaking – *repute*  
*Disqualification* – recent directors
- 8/2001 Russell Alan Read and Norma Gwendoline Barks  
PSV – JB – 19.2.01 – 26.3.01 – Allowed

Disqualification – remitted case – new hearing or a review

- 9/2001 AG Mckenna (T/a AG Travel)  
PSV – JB – 19.4.01 – 14.5.01 – Dismissed  
Transport manager – standard.  
Maintenance – notification of changes
- 10/2001 Thomas Smith  
HGV – JB – 19.4.01 – 14.5.01 - Dismissed  
*Drivers hours and tachographs* – consideration – TC entitled to take into account criminal charges which had not been proceeded with at trial – repute
- 11/2001 Pagoda Travel  
PSV – HC – 23/24.4.01 – 11.5.01 – Remitted  
*Notice of issues and evidence* – call-up letter – failure to mention disqualification as a possible outcome – effect on PI – need to adjourn public inquiry generally and not merely to invite submissions after notice of disqualification given  
*Financial standing* – adverse finding after TC discouraged submissions
- 12/2001 Anthony James Curtis (T/a Silver Wing Travel)  
PSV – MB – 31.5.01 – 13.6.01 - Dismissed  
*Financial standing* – failure to supply information
- 13/2001 Frigoline And Geoffrey Royle & Geoffrey Hart  
HGV – MB – 31.5.0 – 13.6.01 – Allowed  
*Notice of issues and evidence* – TC in possession of documents not disclosed to operator – need for checklist
- 15/2001 Kevin Malone (T/a Transfreight Services Limited)  
HGV – MB – 31.5.01 – 21.6.01 – Remitted  
*Decision – inadequate reasons*  
*Disqualification* – detail of order – Tribunal reluctant to substitute own views
- 16/2001 Jack Webb (T/a Cooks Tours)  
PSV – HC – 7.8.01 – 22.8.01 – Dismissed  
Repute – general – operator’s inability to cope – lack of trust
- 17/2001 R Hayes (T/a B&S Tyre and Courier Services)  
HGV – JB – 5.7.01 – 23.7.01 – Dismissed  
Decision – adequate reasons – failure to reply to letters or to attend PI
- 19/2001 S Whittaker (T/a SW Freight)  
HGV – JB – 19.4.02 – 14.5.01 – Dismissed  
Repute – overall conclusion.
- 20/2001 William James Jolly (T/a BJ Transport)  
HGV – HC – 24.5.01 – 14.6.01 – Dismissed  
Repute – misconduct
- 28/2001 JD Owen (T/a JD Owen Transport)  
HGV – JB – 5.7.01 – 23.7.01 – Dismissed

Suspension – consequences

- 29/2001 Grouptravs Limited & Borneyard Limited (T/a Buffalo Travel)  
PSV – HC – 24.10.01 – 8.11.01 – Dismissed  
Maintenance – curtailment – appeal heard in absence
- 31/2001 Arriva Derby Limited  
PSV – HC – 8.8.01 – 22.8.01 – Dismissed  
PSV – buses – local service – size of sample
- 32/2001 Michael Moseley (T/a Midas International Freight)  
HGV – HC – 8.8.01 – 22.8.01 – Dismissed  
Repute – conditions – disclosure
- 33/2001 Ian Barry Coward (T/a Bestway Travel)  
PSV – HC – 8.8.01 – 22.8.01 – Dismissed  
Financial standing – failure to supply information
- 39/2001 BKG Transport Limited  
HGV – HC – 5.11.01 – 8.11.01 – Remitted  
*Notice of issues and evidence* – TC in possession of documents not disclosed  
to operator – need for checklist  
*Decision – inadequate reasons*
- 40/2001 Philip & Eileen Gilliar  
HGV – HC – 6.9.01 – 20.9.01 – Dismissed  
*Disqualification – wife*
- 41/2001 Tate Fuel Oils Limited  
HGV – HC – 6.9.01 – 20.9.01 – Dismissed  
Notice of issues and evidence – TC in possession of documents not disclosed  
to operator  
*Procedure* – joinder of issues – operating centre – desirability of hearing  
similar applications together  
– joinder of parties – permission to residents to be joined as parties on appeal  
– notice of appeal – need for particularity  
– extent of Tribunal's powers – dismissal of appeal as application to TC  
bound to fail.  
*Operating centre – suitability*
- 43/2001 RHC White & TL White (T/a CA White & Sons) and RHC White (T/a CA  
White & Sons  
HGV – JB – 27.9.01 – 22.10.01 – Dismissed  
Decision – adequacy of reasons
- 44/2001 Neil Hazel (T/a JRS Freight)  
HGV – HC – 24.10.01 – 6.11.01 - Dismissed  
*Repute* – convictions – notifiability
- 45/2001 D Crompton (T/a D Crompton Haulage)  
HGV – MB – 13.9.01 – 25.9.01 – Allowed  
*Decision – inadequate reasons*

- 48/2001 J&M Head and SJ Johns (T/a Reliance Coaches)  
PSV – MB 13.9.01 – 25.9.01 – Dismissed  
Decision – adequacy of reasons
- 49/2001 Norbert Dentressangle UK Limited  
HGV – JB – 28.9.01 – 22.10.01 - Remitted  
*Drivers hours and tachographs* – meaning and effect of undertaking  
*Repute* – general – assessment to be made as at date of PI  
Procedure – joinder of parties – representation at PI by Vehicle Inspectorate
- 52/2001 Michael & James Sutherland (T/a Sutherland’s Garage)  
PSV – HC – 4.12.01 – 13.12.01 – Dismissed  
Decision – adequacy of reasons
- 53/2001 Marilyn Williams (T/a Cled Williams Coaches)  
PSV – HC – 24.10.01 – 31.10.01 – Dismissed  
Notice of evidence – TC in possession of documents not disclosed to operator – need to raise issues before hearing of appeal  
Decision – adequacy of reasons
- 54/2001 Douglas Guy Wilkins (T/a G Wilkins Haulage)  
HGV – JB – 19.12.01 – 21.1.02 – Dismissed  
Decision – adequacy of reasons
- 56/2001 Surrey County Council v. Paul Williams (T/a Garden Materials Landscaping)  
PSV – JB – 19.12.01 – 22.1.02 - Varied  
*Operating centre* – suitability – imposition of conditions and undertakings – wording  
Appeal to Court of Appeal dismissed – see [Chapter 17 Appeals from Tribunal](#)
- 57/2001 Christopher Kilpatrick (T/a 4 Seasons Coach Hire)  
PSV – HC – 4.12.01- 13.12.01 – Dismissed  
*Repute* - general – son fronting for father  
*Professional competence*
- 58/2001 Graham Michael Buckley  
HGV – JB – 19.12.01 – 22.1.02 – Dismissed  
Maintenance – exemption for agricultural use – burden of proof.  
Decision – adequacy of reasons
- 59/2001 Stephen Ashton (T/a Bank View Travel)  
PSV – JB – 10.1.02 – 13.2.02 – Dismissed  
Decision – adequacy of reasons
- 60/2001 Goldwings (Wales) Limited (T/a Thomas Oil Distributors)  
HGV – HC – 6.2.02 – 18.2.02 – Dismissed  
*Procedure* – appeal – admission of new evidence  
Decision – adequacy of reasons
- 62/2001 TSG Smith (T/a Western International)  
HGV – HC – 6.2.02 – 11.2.02 – Dismissed  
*Termination by non-payment or withdrawal* – no exceptional circumstances for setting aside

- 63/2001 John Troup  
HGV – HC – 4.12.01 – 13.12.01 – Dismissed  
*Maintenance* – failure to arrange for inspections by VI
- 64/2001 Philip Beckwith & Jennifer Dennison (T/a Beckwith Haulage)  
HGV – JB – 10.1.02 – 13.2.02 – Dismissed  
Decision – adequacy of reasons
- 65, 66 & 67/2001 Edward Coakley & Coakley Bus Company Limited & Central Bus Company Limited v. Secretary of State for the Department of Transport Local Government and the Regions  
PSV – HC – 14/15.1.02 – 6.2.02 – Dismissed  
(Decision not to be published)  
Appeal to Court of Appeal allowed – see [Chapter 17 Appeals from Tribunal](#)
- 68/2001 Dukes Transport (Graigavon) Limited v. Vehicle Inspectorate  
HGV – HC – 16/18.1.02 – 6.2.02 – Dismissed  
Procedure – joinder of issues – desirability of inquiries relating to operator and to drivers' conduct being heard together  
– appeal procedure – admission of new evidence  
– joinder of parties – representation at PI – Vehicle Inspectorate  
*Drivers hours and tachographs* – not enough to set up systems – operator obliged to supervise and monitor performance – meaning of undertaking  
Professional competence – transport manager – loss of repute  
Directors duties – non delegable supervision  
*Disqualification* – collective responsibility of directors
- 69/2001 KG Farrow & Sons Limited  
HGV – HC – 6.2.02 – 18.2.02 – Allowed  
Disqualification – evidence in support
- 72/2001 Alan R Brooks  
HGV – HC – 16.4.02 – 10.5.02 – Dismissed  
*Notice of issues and evidence* – call-up letter – failure to mention point not preclude reliance on it if notice given  
Decision – adequate reasons – powers of TC - delegation to staff  
*Costs* – order against Appellant - repudiation of regulatory regime
- 74/2001 Brian Edward Clark  
HGV – HC – 17.4.02 – 24.4.02 – Dismissed  
*Repute* – *convictions* – mandatory revocation  
*Disqualification* – no need for “additional feature”
- 76/2001 Malcolm & Steven Hurst & Valerie Leak (T/a Hurst Coaches)  
PSV – JB – 13.3.02 – 16.4.02 – Dismissed  
(Decision not to be published)
- 77/2001 Wilton Contracts (London) Limited  
HGV – HC – 17.4.02 – 10.5.02 – Allowed  
*Decision* – inadequate reasons

*Procedure* – subsequent alteration by TC without explanation – proper procedure considered

- 78/2001 D Crompton (T/a Crompton Haulage)  
HGV – JB – 25.4.02 – 13.5.02 – Dismissed  
*Repute* – general – effect of outburst by operator at PI  
Appeal to Court of Appeal allowed – see [Chapter 17 Appeals from Tribunal](#)
- 81/2001 K Transport Services (Midlands) Limited  
HGV – JB – 13.3.02 – 24.4.02 – Remitted  
Suspension – need to invite submissions before ordering curtailment or suspension – proportionality  
Drivers' hours and tachographs – meaning of undertaking  
Decision – TC entitled to take into account full enforcement history
- 82/2001 Gussion Transport Limited  
HGV – HC – 17.5.02 – 21.5.02 – Dismissed  
Decision – adequacy of reasons
- 84/2001 Gary Royston Way (T/a Gary Way)  
HGV – JB – 14.3.02 – 15.4.02 – Remitted  
*Operating centre* – suitability – principles to be applied  
Decision – inadequate reasons

## 2002

- 1/2002 Bryan Haulage Limited (No.1)  
HGV – JB – 17.6.02 – 25.6.02 – Remitted  
*Decision* – *inadequate reasons*.  
*Procedure* – appeal – procedure – disorganised state of bundle
- 2/2002 Brian Edgington Limited  
PSV – MB – 7.3.02 – 18.3.02 – Dismissed  
*Procedure* – appeal – procedure – adjournment refused – principles
- 6/2002 Mrs JC Stokes (T/a The Woman's Touch)  
HGV – MB – 7.3.02 – 18.3.02 – Remitted  
*Procedure* – advertisement of application – letter by TAO to wrong address  
appeal – disorganised state of bundle
- 8/2002 Alcaline Limited  
HGV – JB – 25.4.02 – 22.5.02 – Allowed  
*Termination by non-payment or withdrawal* – withdrawal of application to TC – principles.  
*Procedure* – appeal – permission to serve notice of appeal out of time
- 9/2002 George Gollop & Direct Movement Services Limited  
HGV – JB – 25.4.02 – 13.5.02 – Dismissed  
*Repute* – general – submission of false document to TAO with intent to deceive
- 11/2002 Sharon Ponder (T/a Comprehensive Passenger Services)



- PSV – HC – 31.7.02 – 20.8.02 – Remitted  
Financial standing – misunderstanding about necessary information
- 14/2002 William Rees Davies & Partners  
HGV – JB – 16.5.02 – 16.6.02 – Dismissed  
Termination of licence by non-payment or withdrawal – fee
- 15/2002 Bingley Travel Air Limited  
PSV – HC – 28.6.02 – 16.7.02 – Allowed  
*Decision – inadequate reasons*
- 16/2002 John Peter Hills (T/a Motorama Car Sales)  
HGV – HC – 20.5.02 – 10.6.02 – Dismissed  
Operating centre – suitability  
Decision – adequacy of reasons
- 17/2002 Western Welsh (1998) Limited  
PSV – HC – 20.5.02 – 10.6.02 – Dismissed  
Decision – adequacy of reasons
- 18/2002 UK Plant And Haulage (Services) Limited  
HGV – HC – 20.5.02 – 10.6.02 – Dismissed  
*Repute – general – dispute over untaxed fuel – burden of proof on operator*
- 19/2002 Raymond Hazlewood (T/a Haze UK)  
*HGV – JB – 8.4.02 – 10.5.02 – Dismissed*  
Maintenance – adequacy of reasons
- 20/2002 H.A.U.C. Limited  
HGV HC – 28.6.02 – 16.7.02 – Allowed  
Operating centre – removal from licence for breach of conditions
- 21/2002 JD Zieba & GS Fyfield (T/a Mayfare Tours)  
PSV – HC – 9.7.02 – 30.7.02 – Dismissed  
Repute and maintenance – adequacy of reasons
- 22/2002 S Garforth (T/a Ainsdale Transport)  
HGV – HC – 30.7.02 – 20.8.02 – Allowed  
*Decision – inadequate reasons – TC misdirected herself by blaming operator for non-disclosure when relying on solicitor's advice*
- 23/2002 RJ Barber (T/a J&R Autos (Haulage))  
HGV – HC – 9.7.02 – 30.7.02 – Dismissed  
Operator out of touch with Traffic Area Office
- 24/2002 McFletch Hire Services Limited  
HGV – HC – 30.7.02 – 25.11.02 – Remitted  
*Financial standing – restricted licence – financial resources – unpaid fines by director*
- 25/2002 HJ Lea Oakes Limited  
HGV – HC – 10.7.02 – 30.7.02 – Allowed

- Procedure* – joinder of issues – joinder of inquiries relating to operator and to drivers’ conduct – confusion – joinder of parties – participation of accident victim’s parent  
*Maintenance* – delegation to contractor  
*Decision* – *inadequate reasons* – TC plainly wrong
- 27/2002 Duncan Brodie (T/a Duncan Brodie Transport)  
HGV – HC – 17.5.02 – 22.5.02 – Dismissed  
Decision – adequacy of reasons
- 28/2002 F T M Specialist Services Limited  
HGC – HC – 10.7.02 – 30.7.02 – Dismissed  
Termination of licence from non-payment or withdrawal – fee – no exceptional circumstances
- 29/2002 Trevor Christopher Atkinson & Christopher Atkinson (T/a TC Atkinson & Sons)  
HGV – HC – 31.7.02 – 20.8.02 – Varied  
*Operating centre* – suitability – failure to consider lawful use
- 30/2002 Steven Lloyd (T/a London Skips)  
HGV – HC – 10.7.02 – 30.7.02 – Varied  
Disqualification – inappropriate
- 34/2002 WP Rogers  
HGV – HC – 9.7.02 – 30.7.02 – Allowed  
Operator out of touch with TAO
- 37/2002 Benzies Transport Limited  
HGV – JB – 16.8.02 – 3.9.02 – Dismissed  
*Repute* – general – burden of proof – effect of silence by operator
- 39/2002 Excellent Connections Limited  
PSV – JB – 22.8.02 – 18.9.02 – Allowed  
*Notice of issues and evidence* – natural justice – failure by TC to disclose legal advice received from DTLR  
*PSV* – definitions – separate fares – operation of “local services” – meaning  
*Repute* – general – inappropriate to find loss after co-operation with TC in clarifying difficult area of law
- 40/2002 Thames Materials Limited  
HGV – MB – 12.9.02 – 15.10.02 – Remitted  
*Procedure* – appeal – not appropriate to produce own bundle – admission of fresh evidence – principles.  
*Notice of issues and evidence* – desirability of checklist of documents
- 46/2002 Mark Cray (T/a M&M Delivery Service & Light Removals)  
HGV – JB – 23.8.02 – 11.9.02 – Dismissed  
Decision – adequacy of reasons
- 47/2002 D Lowton (T/a Rainhill Express Deliveries) and A Woods (T/a Premier Scaffolding)  
HGV – FB – 19.9.02 – 5.11.02 – Dismissed

*Operating centre – suitability*

- 49/2002 JR Tyres Collection & Disposal Limited  
HGV – JB – 8.7.02 – 29.7.02 – Dismissed  
Decision – adequacy of reasons
- 50/2002 DJ Richardson (T/a Project 2000 Europe Limited)  
PSV – JB – 23.8.02 – 1.10.02 – Dismissed  
Termination of licence by non-payment or withdrawal – fee – no exceptional circumstances
- 51/2002 Michell Thomas (T/a Safeplay After School Club)  
PSV – HC – 10.7.02 – 30.7.02 – Dismissed  
Application for licence – failure to supply information – burden of proof on applicant
- 55/2002 John Slattery Waste Services Limited And John Slattery  
HGV – MB – 12.9.02 – 15.10.02 – Dismissed  
*Procedure* – appeal – not appropriate to produce own bundle – admission of fresh evidence – nature of hearing
- 56/2002 Jeffrey Tote  
HGV – HC – 4.7.02 – 9.7.02 - Remitted  
*Impounding* – time of knowledge of unlawful use – burden of proof  
*Procedure* – appeal – Tribunal consisting of one member
- 62/2002 Thomas Allan  
HGV – FB – 10.10.02 – 22.11.02 – Dismissed  
Order of revocation not received by operator – file destroyed
- 68/2002 First Western National Buses  
PSV – FB – 19.9.02 – 5.11.02 – Allowed  
PSV – buses – local services – TC failed to give reasons for rejecting operator's evidence  
*Decision* – inadequate reasons
- 69/2002 William C Hockin Limited  
HGV – FB – 10.10.02 – 22.11.02 – Remitted  
*Decision* – inadequate reasons
- 75/2002 Hazco Environmental Services Limited  
HGV – HC – 29.10.02 – 13.11.02 – Dismissed  
*Drivers hours and tachographs* – entry of false names  
*Disqualification* – responsibility of directors  
*Procedure* – appeal – admission of new evidence
- 81/2002 James Heaver & Maurice Heaver (T/a Heaver Brothers)  
HGV – FB – 19.9.02 – 5.11.02 – Remitted  
*Decision* – inadequate reasons  
*International issues* – meaning of cabotage – misdirection  
Notice of issues and evidence – non-disclosure of documents by TC – natural justice

Part 2: Chronological List of Decisions

82/2002 Alison Jones (T/a Shamrock Coaches), RH & DT Edwards (T/a Bridgend Bus Company Limited & Venture Travel) AND Clayton Jones (T/a Wales And The Marches Bus Company)

PSV – FB – 11.10.02 – 29.11.02 – Remitted

PSV – buses – local services – determination under s.111 TA 1985 – need for consideration of actual amount payable

*Decision – inadequate reasons – need for analysis of detail and for reasons*

85/2002 CS Barber

HGV – FB – 19.9.02 – 5.11.02 – Dismissed

Decision – adequacy of reasons

92/2002 D Bailey (T/a DSP Travel)

PSV – HC – 6.11.02 – 25.11.02 – Allowed

PSV – buses – local services – repayment of fuel duty rebate – wrong approach

94/2002 BKG Transport Limited

HGV – FB – 10.10.02 – 22.11.02 – Remitted

*Decision – inadequate reasons*

98/2002 Stephen William Grayson

HGV – JB – 23.8.01 – 11.9.02 – Dismissed

*Impounding – no unlawful use*

99/2002 M Williams & C Williams (T/a Haydn's Tours & Travel)

PSV – HC – 6.11.02 – 25.11.02 – Dismissed

Decision – adequacy of reasons

114/2002 PC Morgan (T/a Morgan Transport)

HGV – HC – 6.11.02 – 25.11.02 – Dismissed

Decision – adequacy of reasons

117/2002 Stephen Cotterill and K&S (428) Limited

HGV – JB – 19.02.03 – 24.03.03 – Allowed

*Decision – inadequate reasons – need for balancing exercise*

*Repute – general – failure to assess as at date of PI*

118/2002 LS Scaffolding Limited

HGV – FB – 11.12.02 – 10.1.03 – Dismissed

*Decision – inadequate reasons.*

*Costs – application refused*

120/2002 Patrick John & Katrien Tangney (T/a Tangney Tours)

PSV – JB – 10.1.03 – 5.2.03 – Dismissed

Decision – adequacy of reasons

125/2002 Bellfield Transport Limited

HGV – HC – 17.12.02 – 23.12.02 – Allowed

*Decision – inadequate reasons – findings on refusal to grant licence – no hearing*

132/2002 Benjamin Smith

HGV – FB – 11.12.02 – 10.1.03 – Allowed

Impounding – adequacy of reasons – lack of caution

- 133/2002 Richard Bryan  
HGV – JB – 19.02.03 – 20.03.03 – Dismissed  
*Disqualification* – no additional features required  
*Decision* – *inadequate reasons* – overwhelming case
- 134/2002 WC Commercials Limited  
HGV – JB – 19.02.03 – 24.03.03 – Remitted  
*Impounding* – no need for full hearing at Tribunal – misdirection on meaning of knowledge of unlicensed use – applicability of exemption if load being carried for testing
- 136/2002 Oakley Road Services Limited  
PSV – FB – 11.12.02 – 10.1.03 – Dismissed  
Decision – adequacy of reasons
- 144/2002 Abbeycheer Limited  
HGV – JB – 10.1.03 – 3.2.03 – Allowed  
*Operating centre* – where normally kept
- 145/2002 AMD Transport Solutions Limited  
HGV – FB – 29.01.03 – 12.2.03 – Dismissed  
*Repute* – convictions
- 150/2002 FWS Carter & Sons Limited  
HGV – FB – 29.01.03 – 12.02.03 – Allowed  
*Repute* – convictions  
*Decision* – *inadequate reasons*
- 151/2002 Coachmaster Limited (T/a Wingate Tours)  
PSV – JB – 20.02.03 – 31.03.03 – Dismissed  
(Decision not to be published)
- 154/2002 F Francis (T/a Advance)  
HGV – FB – 11.12.02 – 23.12.02 – Dismissed  
*Financial standing* – failure to supply information.  
Decision – adequacy of reasons
- 167/2002 A Cooper (T/a C-Fare (Oban))  
HGV – HC – 28.02.03 – 12.03.03 – Dismissed  
*Drivers hours and tachographs*  
Suspension – consideration of consequences – guidelines
- 175/2002 Haart.EU.Com.UK  
PSV – FB – 29.01.03 – 27.02.03 – Dismissed  
*Repute* – general – veil of incorporation – involvement with others
- 186/2002 Panther Distribution Limited & Wilson Barrett  
HGV – JB – 10.04.03 – 14.05.03 – Adjourned  
*Repute* – general – unauthorised move of operating centre  
*Operating centre* – where normally kept – unauthorised movement

- 196/2002 Frank Booth (T/a Swift Minicoaches)  
PSV – MB – 4.03.03 – 18.03.03 – Dismissed  
Decision – adequate reasons  
Procedure – conduct of PI – refusal to adjourn
- 197/2002 Mason Haulage (A Mason T/a Mason Haulage)  
HGV – MB – 4.03.03 – 18.03.03 – Allowed  
*Operating centre* – where normally kept  
*Decision* – inadequate reasons  
Suspension – failure to consider submissions on consequences
- 217/2002 Bryan Haulage Ltd v Vehicle Inspectorate (No.2)  
HGV – HC – 12.06.03 – 23.06.03 – Allowed  
*Repute* – correct approach – proportionality  
*Disqualification* – directors – correct approach  
Drivers hours and tachograph – lack of follow-up
- 221/2002 W Sleeman  
HGV – HC – 12.06.03 – 23.06.03 – Dismissed  
Decision – adequacy of reasons
- 239/2002 Jubilee Mount Limited, Michael Hodgson & Agnus Gaylor  
HGV – JB – 11.04.03 – 9.05.03 – Dismissed  
Decision – adequacy of reasons
- 250/2002 Northampton Transport Limited  
PSV – FB – 9.04.03 – 8.05.03 – Dismissed  
PSV – buses – local services

## 2003

- 2003/2 First Bristol Buses Limited  
PSV – FB – 8.05.03 – 5.06.03 – Dismissed  
PSV – local services – size of sample – calculation of penalty
- 2003/3 Close Asset Finance Limited v. Secretary of State for Transport  
HGV – HC – 28.02.03 – 12.03.03 – Remitted  
*Impounding* – extent of knowledge of unlawful use by finance house – high degree of fault required
- 2003/4 Leisurenotice Limited  
HGV – FB – 9.04.03 – 28.04.03 – Dismissed  
*Professional Competence* – Transport manager – loss of repute
- 2003/8 GP Travel  
PSV – FB – 8.05.03 – 2.06.03 – Mixed  
Decision – adequacy of reasons
- 2003/16&17 Faircharm Limited & Red Lion Transport Limited  
HGV – FB – 8.05.03 – 2.06.03 – Dismissed  
Decisions – adequacy of reasons

- 2003/30 Helms Coaches Limited  
PSV – MB – 29.05.03 – 26.06.03 – Allowed  
*Human Rights* – proportionality – correct approach – financial standing  
*Procedure* – continual interruptions – no opportunity for final submissions
- 2003/34 Wasco Limited  
HGV – HC – 7.05.03 – 13.05.03 – Dismissed  
Impounding – adequacy of reasons
- 2003/45 JJC Bulk Tippers Limited  
HGV – JB – 16.05.03 – 4. 07.03 – Mixed  
*Professional Competence* – transport manager – no power to disqualify  
*Disqualification* – no power to disqualify transport manager
- 2003/46 The Fox (A1) Limited  
HGV – MB – 29.05.03 – 26.06.03 – Allowed  
Decision – inadequate reasons
- 2003/56 T A Jones  
HGV – HC – 6.05.03 – 13.05.03 – Dismissed  
*Impounding* – adequacy of reasons  
*Human Rights* – proportionality
- 2003/58 S Sowerby  
HGV – HC – 12.09.03 – 23.09.03 – Allowed  
*Notice of issues and evidence* – notice to transport manager  
*Professional competence* – position of transport manager
- 2003/61 Mohammad Iqbal (T/a M&M Coaches)  
PSV – FB – 18.07.03 – 30.07.03 – Dismissed  
PSV – fuel duty rebate  
Decision – adequate reasons
- 2003/62 Tachograph Centre Limited  
PSV – JB – 16.06.03 – 9.07.03 – Dismissed  
*Repute* – refusal to grant licence – previous revocation of associated company  
PSV – definitions – identity of operator
- 2003/64 Cambus Limited  
PSV – FB – 18.07.03 – 30.07.03 – Allowed  
PSV – fuel duty rebate  
Decision – inadequate reasons
- 2003/70 Capital Bank Plc  
HGV – HC – 6.05.03 – 13.05.03 – Allowed  
Impounding – financial house – extent of knowledge
- 2003/71 Trapstar Limited  
HGV – JB – 24.07.03 – 20.08.03 – Dismissed  
*Repute* – deliberate falsification of tachographs
- 2003/73 M Waddington



- HGV – JB – 16.06.03 – 2.07.03 – Dismissed  
*Professional competence* – transport manager – extent of duties  
*Procedure* – suggestion of bias
- 2003/77  NL Commercials Limited  
          HGV – HC – 10.06.03 – 23.06.03 – Allowed  
*Impounding* – hire company – extent of knowledge
- 2003/80  ASJ (Euro) Logistics Limited  
          HGV – FB – 18.07.03 – 30.07.03 – Dismissed  
Financial standing  
Decision – adequate reasons
- 2003/85  Nostalgiabus Limited  
          PSV – HC – 12.09.03 – 23.09.03 – Dismissed  
*Decision* – *inadequate reasons* – not sufficient to set aside decision
- 2003/87  Jonathan Hansford (T/a Jonathan Hansford Plant Hire)  
          HGV – HC – 6.08.03 – 14 .08.03 – Dismissed  
*Operating centre* – suitability – effect of Lawful Development Certificate
- 2003/90 & 122  CPT Commercials (Stockport) Ltd and CPT & Sons Transport UK Ltd  
          HGV – HC – 3.07.03 – 15.07.03 – Remitted  
*Impounding* – identity of applicant – amendment of form  
*Human rights* – revocation without notice – consideration of merits
- 2003/94  Dawlish Coaches Limited  
          PSV – JB – 24.07.03 – 20.08.03 – Allowed  
*Repute* – long operating history – revocation disproportionate  
*Professional Competence* – representation of transport manager  
Drivers' hours and tachographs – serious failures  
Decision – inadequate reasons
- 2003/95  T White  
          HGV – HC – 10.06.03 – 23.06.03 – Allowed  
Impounding – extent of knowledge  
Decision – inadequate reasons
- 2003/107  R A Meredith & Son (Nurseries) Limited  
          HGV – JB – 25.07.03 – 20.08.03 – Varied  
*Repute* – proportionality – new transport manager in place  
*Suspension* – ordered by Tribunal  
Decision – inadequate reasons
- 2003/112  Reliance Coaches  
          PSV – MB – 1.09.03 – 1.10.03 – Allowed  
Repute – proportionality – confrontation with VI
- 2003/116  A Reid  
          HGV – MB – 1.09.03 – 1.10.03 – Dismissed  
*Procedure* – advertisement of application  
*Operating centre* – need for correct advertisement of application

- 2003/117 G Patrick & M Patrick (T/a Michelle's Catering Service)  
HGV – JB – 24.07.03 – 20.08.03 – Dismissed  
*Procedure* – advertisement of application  
*Operating centre* – application for transfer – advertisement
- 2003/120 JCM Print Services Limited  
HGV – JB – 4.09.03 – 30.09.03 – Dismissed  
*Procedure* – advertisement of application
- 2003/132 J B Hogger  
HGV – MB – 1.09.03- 1.10.03 – Dismissed  
*Impounding* – ownership – burden of proof on applicant  
*Procedure* – conflicting decisions by Traffic Commissioner
- 2003/138 P Coakley  
PSV – HC – 16.09.03 – 23.09.03 – Dismissed  
*Procedure* – determination of identity of operator
- 2003/139 W C Commercials Limited  
HGV – HC – 9.01.03 – 27.10.03 – Allowed  
*Impounding* – knowledge – high degree of fault necessary
- 2003/142 Thames Bus Limited  
PSV – JB – 4.09.03 – 30.09.03 – Dismissed  
Decision – adequate reasons – proportionate  
Maintenance – serious defects
- 2003/145 Norfolk CC v. Woodgrove Limited  
HGV – JB – 25.07.03 – 20.08.03 – Dismissed  
*Operating centre* – suitability  
*Procedure* – validity of objection – no need for public inquiry
- 2003/147 WC Hockin (Transport) Limited  
HGV – JB – 20.10.03 – 12.11.03 – Allowed  
*Repute* – revocation disproportionate
- 2003/157 North Kent Recycling Limited  
HGV – MB – 1.09.03 – 1.10.03 – Dismissed  
*Drivers' hours and tachographs* – definition of "road"  
*Repute* – revocation proportionate
- 2003/169 Project 2000 Europe Limited  
HGV – JB – 4.09.03 – 30.09.03 – Dismissed  
*Procedure* – advertisement of application
- 2003/176 Sigma Trans Limited  
HGV – HC – 9.10.03 – 27.10.03 – Dismissed  
*Operating centre* – where normally kept  
*International issues* – vehicles continually on move
- 2003/194 Smith's Distribution Limited  
HGV – JB – 21.01.04 – 25.02.04 – Dismissed  
Decision – adequate reasons

- 2003/200 AB  
HGV – HC – 3.12.03 – 15.12.03 – Remitted  
*Repute* – spent convictions - disclosure
- 2003/201 S&V Supplies (Scotland) Limited  
HGV – JB – 18.11.03 – 11.12.03 – Allowed  
*Impounding* – knowledge – need for high degree of fault  
*Notice of issues and evidence* – reliance on earlier undisclosed decision
- 2003/250 Anglian Removals Limited  
HGV – JB – 20.01.04 – 9.02.04 – Allowed  
*Procedure* – advertisement of application – consideration of necessary details
- 2003/252 Thomas Transport Limited v. Rother District Council & Others  
HGV – HC – 3.12.03 – 22.12.03 – Allowed  
Operating centre – suitability – review
- 2003/254 A Jones (T/a Shamrock Coaches)  
PSV – HC – 14.04.04 – 27.04.04 – Dismissed  
*Buses* – penalties – excuses – burden of proof  
*Procedure* – rehearing – when different TC is necessary  
Appeal to Court of Appeal dismissed – see [Chapter 17 Appeals from Tribunal](#)
- 2003/255 Heavypack Haulage Limited  
HGV – FB – 17.12.03 – 23.01.04 – Mixed  
*International issues* – cabotage  
*Procedure* – bias – test to be applied
- 2003/258 JD Cowan & AD Fenny  
HGV – HC – 5.11.03 – 18.11.03 – Dismissed  
*Professional competence* – loss of repute by transport manager  
*Repute* – revocation proportionate
- 2003/262 GW Elliott  
HGV – JB – 18.12.03 – 15.01.04 – Dismissed  
*Impounding* – power to stop vehicle
- 2003/271 M&S Jarvis (T/a Globe Coaches)  
PSV – JB – 18.12.03 – 15.01.04 – Mixed  
Decision – inadequate reasons
- 2003/272 B Mord  
HGV – FB – 17.12.03 – 23.01.04 – Dismissed  
*Impounding* – ownership
- 2003/273 CPT & Sons Transport Limited  
HGV – FB – 17.12.03 – 29.01.04 – Dismissed  
Decision – adequate reasons
- 2003/284 Team C Couriers Limited  
HGV – FB – 9.01.04 – 3.02.04 – Dismissed  
Decision – adequate reasons

- 2003/285 B Varney  
HGV – FB – 9.02.04 – 3.02.04 – Dismissed  
Decision – adequate reasons
- 2003/286 K Richards  
HGV – FB – 9.01.04 – 3.02.04 – Dismissed  
*Impounding* – recovery vehicle
- 2003/287 Malco Freight Limited  
HGV – FB – 9.01.04 – 6.02.04 – Dismissed  
Decision – adequate reasons
- 2003/288 B Makins (T/a Tittleshall Coachways)  
PSV – JB – 20.01.04 – 19.02.04 – Dismissed  
(Decision not to be published)
- 2003/292 AJ Transport  
HGV – FB – 8.01.04 – 15.01.04 – Dismissed  
Decision – adequate reasons
- 2003/300-301-302 Andrews (Sheffield) Limited & Others  
PSV – HC – 11.02.04 – 26.02.04 – Dismissed  
PSV – penalties under s.155 TA 2000
- 2003/307 J C Lee (T/a CF Transport)  
PSV – JB – 20.01.04 – 9.02.04 – Allowed  
(Decision not to be published)
- 2003/309 B Smith  
HGV – JB – 20.01.04 – 24.02.04 – Dismissed  
*Impounding* – lack of caution – effect of acquittal  
*Procedure* – Tribunal not bound by previous decisions
- 2003/314 L Robbins & R Gillett  
PSV – JB – 21.01.04 – 14.02.04 – Allowed  
*Repute* – convictions  
*Procedure* – natural justice – not allowing case to be put
- 2003/315 JJ McCaffrey (T/a Montana Freight Services) & S Pallas (T/a Pallas Transport)  
HGV – HC – 18.06.04 – 2.07.04 – Dismissed  
*Repute* – use of untaxed fuel  
*Financial standing* – monies in wrong bank account
- 2003/327 The Fox (A1) Limited  
PSV – JB – 10.03.04 – 5.04.04 – Dismissed  
*Human rights* – bias – test to be applied
- 2003/335 J Falk  
HGV – JB – 12.03.04 – 20.04.04 – Allowed  
Repute - disproportionate

- 2003/336 Winforfar Travel & Transport Services Limited  
HGV – FB – 26.02.04 – 11.03.04 – Dismissed  
*Procedure* – advertisement of application – consideration of necessary details
- 2003/338 AS Deacon  
HGV – FB – 26.02.04 – 11.03.04 – Allowed  
*Impounding* – knowledge – subjective not objective  
*Decision* – inadequate reasons
- 2003/343 Anglo Rom Trans (Uk) Limited; Team Kitchens Limited & Paramount  
Kitchens Limited  
HGV – JB – 12.04.04 – 21.04.04 – Mixed  
*Professional competence* – need for control of operations  
*Operating centre* – where vehicles normally kept  
International issues – Romanian drivers  
Appeal to Court of Appeal allowed in part – see [Chapter 17 Appeals from Tribunal](#)
- 2003/344 A Roffey  
PSV – JB – 12.03.04 – 20.04.04 – Allowed  
*Disqualification* – reduced  
*Procedure* – adjournment
- 2003/350 AL Madina Transport Limited  
HGV – MB – 6.04.04 – 12.05.04 – Allowed  
*Procedure* – perception of bias – refusal to adjourn  
*Decision* – inadequate reasons
- 2003/351 D Silman (T/a Park Tours)  
PSV – JB – 10.03.04 – 4.04.04 – Dismissed  
*Decision* – adequate reasons
- 2003/369 JE Keeping  
HGV – FB – 26.02.04 – 11.03.04 – Dismissed  
*Impounding* – lack of grounds for return of vehicle

## 2004

- 2004/13 Finance Leasing (London) Limited  
HGV – HC – 23.04.04 – 7.04.04 – Dismissed  
*Impounding* – express finding of knowledge
- 2004/21 Carway Haulage Limited  
HGV – HC – 6.05.04 – 18.05.04 – Dismissed  
*Professional competence* – failure to supply certificate of qualification of  
transport manager
- 2004/22 R J Jack (T/a RSJ Transport)  
HGV – HC – 31.03.04 – 14.04.04 – Dismissed  
*Impounding* – express finding of knowledge
- 2004/23 R J Mortimer  
HGV – HC – 23.03.04 – 7.04.04 – Dismissed

Termination by non-payment or withdrawal – fee – no exceptional circumstances

- 2004/24 Booker Coaches Limited  
PSV – JB – 20.05.04 – 14.06.04 – Dismissed  
Decision – adequate reasons
- 2004/30 T McPhee  
HGV – MB – 6.04.04 – 30.04.04 – Dismissed  
Termination by non-payment or withdrawal – fee – no exceptional circumstances
- 2004/34 A & S Transport (London) Limited  
HGV – MB – 6.04.04 – 30.04.04 – Dismissed  
Decision – adequate reasons
- 2004/36 George Jenkins Transport Limited  
HGV – JB - 5.07.04 – 10.08.04 – Allowed  
*Maintenance* – inadequate reasons  
*Suspension* – inadequate consideration of issues  
Notice of issues and evidence – undisclosed documents
- 2004/43 R K Wholesale Limited  
HGV – HC – 14.04.04 – 27.04.04 – Remitted  
*Procedure* – unreasonable refusal of application – alleged lack of information
- 2004/62 Dolphin Express Freight & Caravan Storage Limited  
HGV – JB – 20.05.04 – 28.06.04 – Dismissed  
Decision – adequate reasons
- 2004/63 J & B Fryer Farms  
HGV – FB – 7.07.04 – 4.08.04 – Allowed  
Procedure – confusion over number of authorised vehicles
- 2004/74 Michael Jones  
PSV – FB – 7.07.04 – 4.08.04 – Allowed  
Decision – inadequate reasons
- 2004/81 C Roffey  
PSV – JB – 21.05.04 – 28.06.04 – Mixed  
*Repute* – convictions not serious road traffic offences  
*Disqualification* – proportionality – reduction
- 2004/86 A Medford  
HGV – JB – 21.05.04 – 14.06.04 – Dismissed  
Decision – adequate reasons
- 2004/93 R Williams  
HGV – FB – 7.07.04 – 4.08.04 – Dismissed  
*Financial standing* – failure to supply information
- 2004/95 Clearout Limited  
HGV – JB – 21.05.04 – 14.06.04 – Dismissed  
Decision – adequate reasons

- 2004/96 B Nutter  
HGV – FB – 23.09.04 – 18.10.04 – Dismissed  
Decision – adequate reasons  
Impounding
- 2004/98 WH Vaughan  
PSV – FB – 7.07.04 – 2.08.04 – Dismissed  
Decision – adequate reasons
- 2004/101 G Boyd  
HGV – FB – 6.10.04 – 2.11.04 – Dismissed  
Decision – adequate reasons  
Professional Competence
- 2004/127 BV Zainudeen (T/a Langley Transport Services)  
HGV – HC – 4.08.04 – 16.08.04 – Dismissed  
Decision – adequate reasons
- 2004/129 & 272 Buzy Bus Limited & Catch Me Bus.Com Limited & S Bailey  
PSV – FB – 14.12.04 – 10.01.05 – Dismissed  
Termination by non-payment or withdrawal – surrender not accepted
- 2004/138 Parkash Ram Banga (T/a Banga Travel)  
PSV – JB – 13.08.04 – 6.09.04 – Dismissed  
Decision – adequate reasons  
PSV – imposition of penalty
- 2004/141 B Cutmore (T/a A Trip In Time)  
PSV – HC – 29.09.04 – 14.10.04 – Dismissed  
Decision – adequate reasons  
PSV – imposition of penalties and curtailment
- 2004/145 G Wright (T/a Wright Transport Services)  
PSV – FB – 23.09.04 – 2.11.04 – Allowed  
*Repute* – genuine subcontract with disqualified operator  
*Decision* – inadequate reasons
- 2004/147 Amenity Horticultural Services Limited v. Rother DC  
HGV – JB – 27.10.04 – 18.11.04 – Dismissed  
*Operating Centre* – condition limiting movements  
*Notice of issues and evidence* – deemed service of documents under 1995  
GVLO Regs
- 2004/152 Frank Meager  
HGV – FB – 7.07.04 – 2.08.04 – Dismissed  
*Impounding* – no residual discretion – not disproportionate
- 2004/160 HG Stanhope  
HGV – JB – 13.08.04 – 5.09.04 – Remitted  
Impounding – new evidence of ownership
- 2004/161 J Shenton  
HGV – FB – 23.09.04 – 18.10.04 – Dismissed



Decision – adequate reasons  
Impounding

- 2004/164 T Senior (T/a Tim's Private Hire)  
PSV – JB – 13.08.04 – 31.08.04 – Remitted  
Financial standing – failure by Traffic Area Office to assist
- 2004/187 Enko Limited  
HGV – HC – 4.11.04 – 19.11.04 – Dismissed  
Decision – adequate reasons – late supply of information
- 2004/191 Vivian Williams (T/a Vivian Williams & Sons)  
HGV – JB – 2.09.04 – 29.09.04 – Dismissed  
Decision – adequate reasons
- 2004/202 D Holloway  
HGV – MB – 30.09.04 – 22.10.04 - Dismissed  
*Operating Centre* – available for use – issues of law to be avoided
- 2004/209 & 252 Home James Limousines Limited & Phillip Harries (T/a Dynevor  
Wedding Cars  
PSV – JB – 2.09.04 – 29.09.04 – Allowed  
PSV – Stretch limos – no need for certificate of initial fitness if maximum 8  
passengers
- 2004/211 Plumbing & Heating Co (Norwich) Limited  
HGV – JB – 2.09.04 – 29.09.04 – Dismissed  
*Termination by non-payment or withdrawal* – postal delay
- 2004/230 PA Ball (T/a Glenearn Plant Hire)  
HGV – HC – 4.11.04 – 19.11.04 – Dismissed  
Decision – adequate reasons
- 2004/231 S Cole  
HGV – FB – 14.12.04 – 10.01.05 – Dismissed  
Impounding – knowledge that licence required
- 2004/237 B Gillivan (T/a Gillivan Skip Hire)  
HGV – MB – 30.09.04 – 22.10.04 – Dismissed  
*Procedure* – inaccurate advertisement of application  
*Operating Centre* – must be clearly identified on plans or maps supplied
- 2004/241 D M Alexander (T/a Alexander Transport International)  
HGV – HC – 3.11.04 – 19.11.04 – Dismissed  
*Decision* – inadequate reasons – conclusion inevitable so appeal dismissed
- 2004/248 S Hart (T/a Hamill Transport)  
HGV – FB – 23.09.04 – 30.10.04 – Dismissed  
Decision – adequate reasons – failure to supply information
- 2004/255-258-292-293 & 349-350 Martin Oliver, Marion Oliver & Stuart Oliver And  
Revalo Logistics Limited  
HGV – HC – 26&29.11.04 – 21.12.04 – Dismissed  
*Repute* – very serious case – multiple issues

*Drivers hours and tachographs – conspiring with drivers to falsify*

- 2004/265 J & M Heaver (T/a Heaver Bros Limited)  
HGV – FB – 24.11.04 – 20.12.04 – Dismissed  
Decision – adequate reasons
- 2004/267 First West Yorkshire Limited  
PSV – HC – 19.11.04 – 9.12.04 – Dismissed  
Decision – adequate reasons
- 2004/277 Bison Freight Limited  
HGV – JB – 13.01.05 – 7.02.05 – Dismissed  
Financial standing – failure to provide information
- 2004/295 T & M Plant Hire Limited  
HGV – JB – 7.12.04 – 13.01.05 – Dismissed  
*Operating Centre* – safety of access & egress – TC’s own observations  
Decision – adequate reasons
- 2004/296 Sun Yan Lee  
HGV – HC – 4.11.04 – 19.11.04 – Dismissed  
Decision – adequate reasons – late supply of information
- 2005/299 First Manchester Limited  
PSV – FB – 31.03.05 – 28.04.05 – Allowed  
*Maintenance* – curtailment – proportionality
- 2004/307 A B Castle Limited  
HGV – HC – 3.11.04 – 19.11.04 – Dismissed  
Decision – adequate reasons – late supply of information
- 2004/313 Yare Haulage Limited & Peter Pawlett  
HGV – HC – 4.11.04 – 19.11.04 – Allowed  
Drivers’ hours and tachographs – failure to take action  
Repute – need to judge as at date of public inquiry
- 2004/314 Muck It Limited  
HGV – HC – 19.11.04 – 7.12.04 – Dismissed  
Repute – burden of proof – position at time of application and thereafter  
contrasted  
Disqualification – absent director – representations  
Appeal to Court of Appeal allowed in part – see [Chapter 17 Appeals from Tribunal](#)
- 2004/315 MME Services Limited  
HGV – JB – 11.05.05 – 29.06.05 – Allowed  
*Procedure* – effect of failure of recording equipment at PI  
*Operating Centre* – failure to consider status of representor
- 2004/324 CJ Evans t/a Shovel and Shift  
HGV – JB – 13.01.05 – 1.02.05 – Dismissed  
Financial standing - failure to provide information
- 2004/330 RH & DT Edwards Limited

- PSV – JB – 13.01.05 – 24.12.05 – Dismissed  
*PSV* – financial penalty upheld  
Decision – adequate reasons
- 2004/362 & 72 Britannia Hotels Limited & A Langsam T/a Britannia Airport Hotel  
PSV – JB – 7.12.04 – 12.01.05 – Allowed  
*Repute* – effect of non-attendance by directors at PI  
*Termination by law or withdrawal* – acceptance of surrender considered
- 2004/364 Pallas Transport Limited  
HGV – JB – 7.12.04 – 12.11.05 – Dismissed  
*Procedure* – bias – hearing of appeal in England not Scotland  
*Repute* – burden of proof on applicant – result of Customs raid
- 2004/367 N & S Gillman  
HGV – JB – 13.01.05 – 7.02.05 – Dismissed  
*Repute* – failure to disclose previous revocations
- 2004/371 Enviroventure Limited  
HGV – JB – 13.01.05 – 11.02.05 – Allowed  
*Procedure* – decision disproportionate – new order substituted
- 2004/372 Maple Industries Limited  
HGV – FB – 14.12.04 – 14.01.05 – Dismissed  
*Procedure* – dismissal of appeal – time for compliance
- 2004/373 Rai Transport (Midlands) Limited and Amardip & Daljit Singh Rai  
PSV – MB – 27.01.05 – 26.02.05 – Mixed  
*Disqualification* – effect of AngloRom case (CA)  
*Financial standing* – distinction between company and person upheld
- 2004/374 A Coid T/a Magpie Services  
HGV – JB – 13.01.05 – 1.02.05 – Allowed  
*Procedure* – advertisement of operating centre - not misleading
- 2004/383 Blue Arrow Limited  
PSV – MB – 27.01.05 – 26.02.05 – Dismissed  
*Financial standing* – failure to provide information – group accounts insufficient
- 2004/384 Central Couriers & Light Haulage Limited  
HGV – JB – 13.01.05 – 11.02.05 – Dismissed  
Financial standing – failure to provide information
- 2004/391-395-396 Cleansing Service Group Limited & Others  
HGV – FB – 31.03.05 – 28.04.05 – Allowed  
*Repute* – proportionality
- 2004/407 PF White-Hide T/a Victoria Coaches  
PSV – HC – 9.02.05 – 18.02.05 – Allowed  
*Notice of issues and evidence* – incorrect information supplied to TC
- 2004/409 AC Watts  
HGV – HC – 9.02.05 – 24.02.05 – Dismissed

Decision – adequate reasons

2004/426 & 377 EA Scaffolding & Systems Limited & EA Contract Services Limited  
HGV – HC – 10 & 11.03.05 – 4.04.05 – Allowed  
*Procedure* – allegation of bias – law and practice considered  
*Repute* – fronting – identity of operator – law considered

2004/427 PA Moyse T/a PA Moyse Asphalt And Tarmacadam  
HGV – MB – 27.01.05 – 26.02.05 – Dismissed  
Decision – adequate reasons

2004/431 Carleton House Limited  
HGV – FB – 11.02.05 – 26.02.05 – Dismissed  
Impounding – knowledge that use unlawful  
Decision – adequate reasons

2004/439 Surrey County Council v. DJ Willis & J Ripley T/a Ripley & Willis  
HGV – JB – 22.02.05 – 24.03.05 – Allowed  
*Decision* – *inadequate reasons* – detail not considered

2004/450 R Kime & Company Limited T/a Kime's Coaches  
PSV – HC – 9.02.05 – 24.02.05 – Varied  
*Maintenance* – order disproportionate  
*Procedure* – substitution of own order by Tribunal

## 2005

2005/7 2 Travel Group Plc  
PSV – HC – 24.02.05 – 10.03.05 – Allowed  
*Financial standing* – requirements explained – proportionality  
*Procedure* – position of financial assessor considered

2005/8 JA Hogger T/a JCA Transport  
HGV – FB – 7.04.05 – 28.04.05 – Dismissed  
Decision – adequate reasons – application by inexperienced operator

2005/11 Lincolnshire Haulage Limited  
HGV – JB – 22.02.05 – 24.03.05 – Dismissed  
Decision – adequate reasons – fronting

2005/21 First West Yorkshire  
HGV – JB – 8.03.05 – 4.04.05 – Allowed  
*Procedure* – Tribunal substituting own order

2005/29 D Hawkins T/a Station Coaches  
PSV – JB – 21.04.05 – 1.06.05 – Dismissed  
Decision – adequate reasons – multiple failings

2005/39 Zia Rehman  
HGV – FB – 31.03.05 – 29.04.05 – Dismissed  
Decision – adequate reasons – finances

2005/45 S Lean T/a Budget Skip Hire

Part 2: Chronological List of Decisions

- HGV – HC – 27.04.05 – 12.05.05 – Dismissed  
Decision – adequate reasons – change of address
- 2005/46 Mercian Skip Hire Limited  
HGV – FB – 7.04.05 – 22.04.05 – Dismissed  
Decision – adequate reasons – late payment of fee
- 2005/47 Timeline Limited  
PSV – FB – 20.05.05 – 18.06.05 – Allowed  
PSV – reduction in financial penalty
- 2005/50-157 Rush Travel Limited  
PSV – HC – 27.04.05 – 12.05.05 – Dismissed  
*Repute* – failure to heed police guidelines for buses at football matches
- 2005/56 NR Evans & Son Limited  
HGV – HC – 27.04.05 – 12.05.05 – Allowed  
*Suspension* – need for TC to consider consequences  
*Procedure* – joinder of inquiries relating to operator and to drivers' conduct
- 2005/57 M Winspear  
HGV – JB – 11.05.05 – 29.06.05 – Allowed  
*Procedure* – operator's entitlement to a PI before order of revocation
- 2005/64 AC Williams Limited  
HGV – MB – 1.06.05 – 28.06.05 – Dismissed  
Decision – adequate reasons – multiple failings
- 2005/87 P Duckmanton T/a Cartrans  
HGV – JB – 21.04.05 – 3.06.05 – Dismissed  
*Repute* – falsification of maintenance records – imprisonment  
*Maintenance* – falsification of records – bad case
- 2005/88 KPG Site Services Limited  
HGV – FB – 20.05.05 – 18.06.05 – Allowed  
Termination by non-payment or withdrawal – surrender
- 2005/110 G Dem Limited  
HGV – JB – 11.05.05 – 9.06.05 – Allowed  
*Procedure* – failure by TC to respond to application for adjournment of PI
- 2005/118 M & J Tinworth  
HGV – MB – 1.06.05 – 10.07.05 – Dismissed  
*Procedure* – refusal to admit fresh evidence  
*Repute* – convictions – disregard for lapse of time
- 2005/122 Galaxy Travel  
PSV – MB – 1.06.05 – 28.06.05 – Dismissed  
Decision – adequate reasons – multiple failings
- 2005/136 P Tagell  
HGV – MB – 1.06.05 – 28.06.05 – Allowed

*Professional competence* – repute not lost by mere association with disqualified operator

- 2005/146 A Hughes  
HGV – FB – 22.06.05 – 8.07.05 – Dismissed  
Impounding – adequate reasons
- 2005/156 N Rafiq T/a Traveline  
PSV – JB – 8.07.05 – 1.08.05 – Dismissed  
Decision – adequate reasons – application refused – failure to answer letters
- 2005/161 S Warren  
HGV – FB – 22.06.05 – 8.07.05 – Dismissed  
Impounding – adequate reasons
- 2005/164 A Dale  
PSV – FB – 18.07.05 – 5.08.05 – Dismissed  
Professional competence – failure to notify resignation
- 2005/165 JJ McCaffery T/a Montana Transport  
HGV – FB – 22.06.05 – 14.07.05 – Dismissed  
Decision – adequate reasons – refusal of licence – previous loss of repute
- 2005/167 Daju Limited  
HGV – FB – 22.06.05 – 8.07.05 – Dismissed  
Decision – adequate reasons – multiple failings
- 2005/185 British Benzol PLC  
HGV – FB – 18.07.05 – 18.08.05 – Allowed  
*Operating centre* – failure to resolve conflicting interests
- 2005/186 AJ Jones Tipper & Grab Hire  
HGV – FB – 22.06.05 – 8.07.05 – Allowed  
Repute – revocation disproportionate – no intent to avoid regulation
- 2005/203 Balfour Beatty Group Limited  
HGV – FB – 18.07.05 – 18.08.05 – Allowed  
*Decision* – inadequate reasons – inconsistent detail  
*Operating centre* – failure to resolve detail
- 2005/205 Eddie Stobart Limited  
HGV – FB – 18.07.05 – 18.08.05 – Allowed  
*Financial standing* – proportionality  
*Professional competence* – need for notification of changes – proportionality
- 2005/218 BL Menear  
HGV – JB – 8.07.05 – 22.07.05 – Dismissed  
*Impounding* – need to prove ownership of vehicle
- 2005/219 P Smith  
HGV – JB – 17.08.05 – 20.09.05 – Dismissed  
Decision – adequate reasons – operator's failure to answer letters

- 2005/231 HSBC Equipment Finance (UK) Limited  
HGV – JB – 17.08.05 – 20.09.05 – Allowed  
*Impounding* – consideration of proof of ownership of vehicle
- 2005/236 N Alldritt T/a Maple Motors  
PSV – JB – 17.08.05 – 20.09.05 – Dismissed  
*Drivers' hours and rules* – revocation appropriate
- 2005/239 JR Williams T/a JRW Services  
HGV – JB – 17.08.05 – 22.09.05 – Dismissed  
*Repute* – consideration of disregard of convictions
- 2005/259 RJ Evans  
HGV – JB – 16.08.05 – 20.09.05 – Dismissed  
*Impounding* – proof of ownership of vehicle
- 2005/279 TTS Trucking Limited  
HGV – JB – 16.08.05 – 20.09.05 – Dismissed  
*Procedure* – need to hold PI if requested by operator
- 2005/291 Thompson Tours Limited  
PSV – JB – 22.09.05 – 14.10.05 – Dismissed  
(Decision not to be published)
- 2005/300 Paragon Travel Limited  
HGV – JB – 22.09.05 – 14.10.05 – Allowed  
Decision – correction of detail
- 2005/301 & 327 RH & DT Edwards Limited (T/a Eros Travel) and C Jones (T/a  
Wales & Marches Bus Company)  
PSV – JB – 21.09.05 – 19.10.05 – Dismissed  
Practice – status and effect of warnings
- 2005/306 James Scaffolding Limited  
HGV – JB – 22.09.05 – 14.10.05 – Allowed  
*Financial standing* – TC should have assisted in identifying resources
- 2005/323 Eurotaxi Limited  
PSV – JB – 21.09.05 – 19.10.05 – Dismissed  
*PSV* – financial penalty upheld
- 2005/331 Moving Home Company Limited  
HGV – HC – 23.11.05 – 15.12.05 – Dismissed  
*Professional competence* – no power to disqualify transport manager  
*Disqualification* – no power to disqualify transport manager
- 2005/334 Pilkingtons Accrington Limited  
HGV – FB – 30.11.05 – 31.12.05 – Dismissed  
Decision – adequate reasons
- 2005/335 K Everard T/a Lewdown Scaffolding  
HGV – JB – 21.09.05 – 1.11.05 – Dismissed  
Decision – adequate reasons – impounding – no lack of knowledge



- 2005/347 JM Jones (T/a A1 Skips)  
HGV – FB – 30.11.05 – 29.12.05 – Allowed  
*Procedure* – absence of transcript – notes provided incomplete – new hearing ordered
- 2005/355 Danny W Poole international limited  
HGV – HC – 12.10.05 – 8.11.05 – Remitted  
*Disqualification* – CA approach in Anglo-Rom case (see [Chapter 17 Appeals from Tribunal](#)) not followed – “special features” not required
- 2005/356 Edwards Transport (Shropshire) Limited  
HGV – HC – 12.10.05 – 8.11.05 – Allowed  
*Operating centre* – TC must ignore planning objections when planning authority has chosen not to appear
- 2005/357 John Bayne And Sons Limited  
HGV – JB – 14.10.05 – 8.11.05 – Allowed  
*Procedure* – failure to permit operator to comment on VOSA report
- 2005/359 Gipping Container Services Limited & A Hussein  
HGV – FB – 1.12.05 – 28.12.05 – Allowed  
*Suspension* – need for consideration of likely consequences
- 2005/362 M Couzens and D Swain T/A Dawns Transport  
PSV – HC – 22.11.05 – 6.12.05 – Allowed  
*Repute* – burden of proof – operator not present – effect of CA Muck It decision (see [Chapter 17 Appeals from Tribunal](#))
- 2005/367 K Jaggard  
HGV – HC – 23.11.05 – 15.12.05 – Allowed  
*Disqualification* – different periods for partners – no explanation given
- 2005/373 S Ellis  
HGV – HC – 23.11.05 – 15.12.05 – Dismissed  
*Impounding* – not a recovery vehicle – operator disbelieved
- 2005/385 K Grant  
HGV – HC – 23.11.05 – 15.12.05 – Dismissed  
*Procedure* – status of unqualified advocates  
*Impounding* – burden of proof
- 2005/393 C Gaskin  
HGV – HC – 22.11.05 – 6.12.05 – Dismissed  
*Impounding* – adequate reasons
- 2005/411 Frank Maas (UK) Limited  
HGV – FB – 1.12.05 – 28.12.05 – Dismissed  
*Operating centre* – change of centre is a material change
- 2005/412 Capital Bank PLC  
HGV – FB – 1.12.05 – 28.12.05 – Allowed

*Impounding* – high degree of fault required – no positive steps by finance house required

- 2005/413 Red Rose Travel Limited  
HGV – FB – 1.12.05 – 29.12.05 – Remitted  
Financial standing – requirement considered
- 2005/422 Topcoat Uk Limited  
HGV – FB – 1.12.05 – 28.12.05 – Dismissed  
Decision – adequate reasons
- 2005/423 Hillside Traders Limited  
HGV – JB – 8.03.06 – 20.04.06 – Allowed  
*Financial standing* – lack of assistance by Area Office
- 2005/426 Kuldev Singh Oakhal T/a Premier Transport Services  
HGV – JB – 20.12.05 – 11.01.06 – Remitted  
*Termination by law or withdrawal* – surrender – conditions must be met  
*Disqualification* – wrong to impose automatic indefinite period in absence of operator
- 2005/433 MG Hodgkins  
PSV – MB – 4.01.06 – 16.01.06 – Dismissed  
Decision – adequate reasons
- 2005/449 WJ Furber Limited  
HGV – HC – 19.01.06 – 8.02.06 – Dismissed  
*Impounding* – statutory notice – wording considered  
*Impounding* – procedure before TC considered
- 2005/457 LJ Ings T/a Ings Transport  
HGV – JB – 20.12.05 – 17.01.06 – Dismissed  
*Disqualification* – condition on grant of licence preventing employment of named disqualified persons
- 2005/464 Secure Transport and Trading Limited  
HGV – MB – 4.01.06 – 16.01.06 - Allowed  
*Impounding* – misleading wording on application form
- 2005/466 Nijjar Dairies Limited  
HGV – HC – 19.01.06 – 31.01.06 – Allowed  
*Decision* – *inadequate reasons* – not enough to give conclusions
- 2005/471 Excel A-Rate Business Services Limited  
HGV – MB – 4.01.06 – 16.01.06 - Allowed  
*Impounding* – time limit for application to return – directory not mandatory
- 2005/472 Jason McNamara T/a JMC Transport  
HGV – MB – 4.01.06 – 16.01.06 – Dismissed  
*Procedure* – failure to notify change of address
- 2005/473 EB Enterprise Waste Management Limited  
HGV – HC – 19.01.06 – 31.01.06 – Allowed  
*Financial standing* – lack of co-operation by Area Office

- 2005/485 RE Price & MJ Perry T/a Village Green Motor Services  
HGV – HC – 31.01.06 – 8.02.06 – Dismissed  
Financial standing – need to supply adequate documents
- 2005/486 McKillop Trucking Limited  
HGV – JB – 11.01.06 – 31.01.06 – Allowed  
*Financial standing* – burden of proof – revocation
- 2005/488 Norfolk County Council  
HGV – HC – 31.01.06 – 8.02.06 – Allowed  
*Operating centre* – failure to consider objection
- 2005/504 J Harrison T/a J Harrison Car Sales  
HGV – HC – 11.01.06 – 24.01.06 – Remitted  
*Impounding* – legal status of recovery vehicle  
*Decision* – inadequate reasons – refusal on paper needs reasons
- 2005/505 W H Counsell  
HGV – HC – 8.02.06 – 16.02.06 – Dismissed  
Impounding – knowledge of unlawful use
- 2005/523 Swallow Coach Company Limited  
PSV – HC – 8.02.06 – 16.02.06 – Allowed  
*Human rights* – serious delay in decision making  
*Procedure* – delay of 8 months in giving decision deprecated
- 2005/524 PK Banga T/a Banga Transport  
PSV – JB – 7.03.06 – 7.04.06 – Allowed  
*Maintenance* – TC's reaction must be proportionate
- 2005/532 Kundal Lal  
HGV – HC – 19.01.06 – 8.02.06 – Dismissed  
Financial standing – failure to supply evidence
- 2005/537 West Mix Limited  
HGV – JB – 14.02.06 – 31.03.06 – Dismissed  
*Repute* – unauthorised use over long period and false statements
- 2005/542 James Thorogood  
HGV – HC – 19.01.06 – 8.02.06 – Dismissed  
*Decision* – *inadequate reasons*  
*Impounding* – TC refused return without hearing – need for reasons
- 2005/547 Booze Cabin Limited  
HGV – JB – 14.02.06 – 13.03.06 – Allowed  
*Financial standing* – Traffic Area Office required wrong amount
- 2005/554 Koos Limited  
HGV – JB – 25.05.06 – 5.07.06 - Dismissed  
Decision – adequate reasons – failure to provide evidence
- 2005/565 Construction Access UK Limited

HGV – JB – 14.02.06 – 22.03.06 – Dismissed  
*Impounding* – proof of ownership necessary

2005/595 JK Haulage Limited  
HGV – JB – 8.03.06 – 20.04.06 – Dismissed  
*Repute* – fronting for father – sham operation

## 2006

2006/1 D O'Donnell  
HGV – JB – 8.03.06 – 20.04.06 – Dismissed  
Decision – adequate reasons – failure to keep in touch

2006/19 Bayview Enterprises Limited T/a PD Travel  
PSV – HC – 1.03.06 – 14.03.06 – Dismissed  
PSV – payment of penalty under s.39 Transport (Scotland) Act 2001

2006/20 Graystone Limited  
HGV – JB – 14.02.06 – 31.03.06 – Dismissed  
Decision – adequate reasons

2006/56 Paul Oven Transport Services Limited  
HGV – JB – 5.04.06 – 24.05.06 – Dismissed  
*Repute* – burden of proof – application of Muck It case – see [Chapter 17 Appeals from Tribunal](#)

2006/61 Chillway Express Specials Limited  
HGV – JB – 5.04.06 – 18.05.06 – Dismissed  
*Operating Centre* – must give own correspondence address – not enough to give that of representative

2006/73 Anthony George Everett T/a S & A UK v. Secretary of State for Transport  
HGV – HC – 3.05.06 – 16.05.06 – Dismissed  
*International issues* – cabotage – meaning of “temporary use”  
*Repute* – permanent use of Dutch vehicles in GB relevant to GB licence holder’s conduct

2006/84 Iain Scott Fairbairn T/a Eurolink  
HGV – JB – 25.05.06 – 30.06.06 – Dismissed  
Decision – adequate reasons – financial standing

2006/104 Dave Graham Barfoot T/a Dave Barfoot International  
HGV – JB – 5.04.06 – 18.05.06 – Dismissed  
Decision – adequate reasons – revocation after failure to answer correspondence

2006/110 Julia Lawler  
HGV – MB – 26.04.06 – 1.06.06 – Dismissed  
Decision – adequate reasons – impounding

2006/111 Kent Coach Travel Limited

- PSV – MB – 14.06.06 – 4.07.06 – Remitted  
*Notice of issues and evidence* – adequacy of call-up letter  
*Financial Standing* - requirement explained
- 2006/133 Iuanina Parr T/a Parr Plant  
HGV – JB – 26.10.06 – 8.12.06 – Dismissed  
Decision – adequate reasons
- 2006/134 Recycled Waste Transport Limited  
HGV – MB – 14.06.06 – 4.07.04 – Allowed  
*Procedure* – wrong to defer decision and to make it dependent on untested maintenance report
- 2006/146 Stephen Holt T/a Safe Hands Removals  
HGV – MB – 26.04.06 – 5.06.06 – Allowed  
*Procedure* – contents of notice of appeal to be focussed
- 2006/147 Castleton Turf and Topsoil Supplies Limited  
HGV – HC – 9.05.06 – 23.05.06 – Remitted  
*Decision* – *inadequate reasons* – impounding
- 2006/149 A & C Nowell Limited  
HGV – MB – 26.04.06 – 1.06.06 – Allowed  
*Procedure* – effect of concurrent criminal proceedings  
*Maintenance* – failure to take into account recent improvements
- 2006/161 Kentvale Transport Limited  
HGV – MB – 26.04.06 – 5.06.06 – Allowed  
*Drivers hours and tachographs* – lost charts – curtailment disproportionate
- 2006/171 Black & White Motorways Limited  
PSV – HC – 16.06.06 – 28.06.06 – Allowed  
*Decision* – *inadequate reasons* – failure to resolve conflicts of evidence  
*Suspension* – failure to consider likely consequences
- 2006/192 Stephen P Shirley  
PSV – FB – 27.07.06 – 18.08.06 – Allowed  
*Professional competence* – repute of transport manager wrongly decided in absence  
*Procedure* – adverse decision despite indication that absence at PI accepted
- 2006/195 Walter Garfield Wiggan T/a E&S Skip Hire  
HGV – MB – 14.06.06 – 4.07.06 – Dismissed  
*Financial Standing* – calculation of amount – adequacy
- 2006/222 Derek & Linda Smith T/a A Plus Buses  
PSV – HC – 16.06.06 – 28.06.06 – Dismissed  
Decision – adequate reasons – financial standing
- 2006/234 Gary Paul Brandon  
HGV – FB – 27.07.06 – 18.08.06 – Allowed  
*International issues* – operator may be compliant despite residence abroad  
*Operating centre* – vehicles kept in UK despite operator's residence abroad

- 2006/235 Crown Cold Store & Distribution Limited and Karen Thorburn Jones  
HGV – JB – 11.09.06 – 31.10.06 – Dismissed  
*Repute* – daughter fronting for father – TC misled as to father’s role
- 2006/238 Secure Transport and Trading Limited  
HGV – FB – 27.07.06 – 18 08.06 – Dismissed  
Decision – adequate reasons
- 2006/239 D Smith T/a DMS Scaffolding  
HGV – FB – 27.07.06 – 18.08.06 – Dismissed  
Decision – adequate reasons
- 2006/252 Alec Hayden T/a Trans Consult  
HGV – HC – 17.01.07 – 31.01.07 – Dismissed  
*Professional competence* – appointment and duties of transport manager  
*Procedure* – representation by unqualified advocate
- 2006/265 John Edward Fuller  
HGV – HC – 17.08.06 – 13.09.06 – Dismissed  
Decision – adequate reasons
- 2006/266 Sussex Demolition Services Limited  
HGV – HC – 17.08.06 – 13.09.06 – Dismissed  
*Termination by non-payment or withdrawal* – part payment of fees only
- 2006/268 London Office Furniture Warehouse  
HGV – FB – 28.09.06 – 11.11.06 – Allowed  
*Impounding* – imputed knowledge not enough
- 2006/270 Site Compaction Services Limited  
HGV – HC – 17.08.06 – 13.09.06 – Dismissed  
Decision – adequate reasons
- 2006/277 Michael James Fenlon T/a County Skips  
HGV – MB – 13.09.06 – 25.09.06 – Allowed  
*Operating centre* – persistent failure to use – parking outside own house
- 2006/280 Cassels Transport Limited  
HGV – JB – 5.09.06 – 9.10.06 – Allowed  
*Decision – inadequate reasons* – TC’s conclusions unsupported
- 2006/312 Alexander Cooke & Sandra Cooke T/a Cookes Haulage  
HGV – HC – 17.01.07 – 31.01.07 – Dismissed  
Decision – adequate reasons
- 2006/313 David Lloyd  
HGV – HC – 9.08.06 – 17.08.06 – Dismissed  
*Notice of issues and evidence* – contents of call-up letters considered  
*Repute* – false bank statements submitted with original application
- 2006/321 1st Call Limousines Limited  
PSV – JB – 5.09.06 – 9.10.06 – Dismissed

*PSV* – Extended journey to overcome condition requiring 15 miles or more

- 2006/322 Darren Jones T/a D Jones Haulage  
HGV – FB – 10.10.06 – 27.10.06 – Dismissed  
Decision – adequate reasons
- 2006/335 S & A Haulage Limited  
HGV – FB – 19.10.06 – 22.11.06 – Allowed  
Disqualification reduced
- 2006/339 Ralph Avis T/a Avis Waste Services  
HGV – FB – 10.10.06 – 27.10.06 – Allowed  
Disqualification reduced
- 2006/342 Courtney Coaches Limited  
PSV – FB – 19.10.06 – 22.11.06 – Allowed  
*Decision – inadequate reasons* – failure to consider as at date of PI
- 2006/343 Celtic Commercials Limited  
HGV – JB – 11.09.06 – 25.10.06 – Dismissed  
Decision – adequate reasons
- 2006/351 Caledonian Coaches Limited  
PSV – JB – 21.11.06 – 21.12.06 – Allowed  
*PSV* – Order for penalty set aside – serious delay in giving decision  
*Procedure* – serious delay in giving decision
- 2006/352 Lee John Luderman  
HGV – FB – 10.10.06 – 27.10.06 – Dismissed  
Decision – adequate reasons
- 2006/355 Ferguson Transport (Spean Bridge) Limited  
HGV – JB – 21.11.06 – 22.12.06 – Dismissed  
*Procedure* – delay in giving decision  
Decision – adequate reasons
- 2006/361 Sew-It-All Limited  
HGV – JB – 11.09.06 – 24.10.06 – Allowed  
*Termination by non-payment or withdrawal* – reminders not sent
- 2006/372 Bedworth Transport Services Limited  
HGV – FB – 19.10.06 – 24.11.06 – Allowed  
*Decision – inadequate reasons* – failure to evaluate evidence
- 2006/374 VFS Financial Services (UK) Limited  
HGV – FB – 12.10.06- 17.11.06 – Allowed  
Impounding – high degree of fault required
- 2006/376 and 407 Paul Burke and Neil Allen T/a Wrose Travel and Wrose Travel Limited  
PSV – FB – 12.10.06 – 18.11.06 – Allowed  
Repute – order too severe



- 2006/378 VIT Limited  
HGV – FB – 12.10.06 – 17.11.06 – Allowed  
Disqualification reduced
- 2006/379 Dove Collections (UK) Limited  
HGV – JB – 26.10.06 – 4.12.06 – Dismissed  
Decision – adequate reasons – repute – long period of unauthorised operation
- 2006/384 Alan Keir T/a Keir Couriers  
HGV – 9.11.06 – 18.11.06 – Dismissed  
Decision – adequate reasons – impounding
- 2006/385 Linda S Hansen T/a Decker Bus Company  
PSV – FB – 19.10.06 – 22.11.06 – Allowed  
*Termination by non-payment or withdrawal* – reminders sent to wrong address
- 2006/392 Gary Paul Brandon  
HGV – JB – 26.10.06 – 1.12.06 – Allowed  
*International issues* – need for UK transport manager if operator resident abroad
- 2006/399 Ronald Michael Marshall  
PSV – MB – 3.01.07 – 15.01.07 – Allowed  
*Decision – inadequate reasons*
- 2006/400 & 2007/11 Win-For-Far Travel and Transport Services Limited v. Norfolk County Council and Maynard Leslie Winspear  
HGV – HC – 31.01.07 – 5.02.07 – Dismissed  
*Operating centre* – advertisement – wrong road name
- 2006/405 Transclara Limited  
HGV – MB – 3.01.07 – 15.01.07 – Allowed  
*International issues* – test is one of regulatory control  
*Procedure* – power of Tribunal to impose conditions
- 2006/406 PCF EL Limited  
HGV – FB – 24.11.06 – 18.12.06 – Dismissed  
Decision – adequate reasons – impounding
- 2006/443 Pegasus Logistic Solutions Limited  
HGV – MB – 3.01.07 – 15.01.07 – Dismissed  
Decision – adequate reasons
- 2006/445 J & CM Smith (Whiteinch) Limited and John Smith  
HGV – JB – 30.03.07 – 8.05.07 – Dismissed  
*Repute* – Maintenance – use of vehicles on road while prohibition notices in force
- 2006/447 David Simister T/a South Wales Limos Inc  
PSV – HC – 31.01.07 – 5.02.07 – Dismissed  
Decision – adequate reasons

- 2006/449 Mary Robb Higgins  
HGV – MB – 3.01.07 – 15.01.07 – Dismissed  
Decision – adequate reasons
- 2006/454 William George Blake t/a WK Light Commercials  
HGV – MB – 3.01.07 – 15.01.07 – Dismissed  
Decision – adequate reasons
- 2006/455 Lakha Scaffolding Limited  
HGV – HC – 8.01.07 – 23.01.07 – Dismissed  
Decision – adequate reasons
- 2006/457 Rex Haulage Limited  
HGV – FB – 16.02.07 – 13.03.07 – Allowed  
*Notice of issues and evidence* – allegation of unauthorised use of operating  
centre not put
- 2006/459 Miranda Jones, Director, Harcol Limited  
HGV – FB – 16.02.07 – 13.03.07 – Allowed  
*Notice of issues and evidence* – call-up letter sent to old address
- 2006/475 Tuc Tuc Limited  
PSV – FB – 16.02.07 – 13.03.07 – Allowed  
PSV – penalty payment reduced – motorised rickshaws – proportionality
- 2006/478 M Ker T/a First Quote Pallets  
HGV – FB – 16.02.07 – 13.03.07 – Allowed  
*Notice of issues and evidence* – non-receipt of call-up letter
- 2006/481 Parkash Ram Banga T/a Banga Travel  
PSV – JB – 16.03.07 – 20.04.07 – Dismissed  
Decision – adequate reasons
- 2006/482 Alison Jones T/a Shamrock Coaches  
PSV – MB – 18.04.07 – 9.05.07 – Dismissed  
PSV – substantial penalty payments – detail considered  
*Termination by non-payment or withdrawal* – attempt to avoid penalty  
payment by surrender and non-payment of annual fee
- 2006/483 Viridor Waste Management Limited  
HGV – MB – 18.04.07 – 8.05.07 – Allowed  
*Decision – inadequate reasons* – failure properly to review evidence
- 2006/484 Colin John Munt T/a C&M Coaches  
PSV – FB – 16.02.07 – 13.03.07 – Dismissed  
Decision – adequate reasons
- 2006/487 D & H Travel Limited  
PSV – HC – 22.05.07 – 6.06.07 – Dismissed  
*Repute* – sexual harassment not relevant conduct  
*Procedure* – no power to make interim orders without hearing operator

**2007**

- 2007/27 Suffolk Gate Company Limited  
HGV – JB – 16.03.07 – 11.04.07 – Dismissed  
*Termination by non-payment or withdrawal* – delay in applying to set aside
- 2007/30 & 31 Industrial and Corporate Finance Limited  
HGV – MB – 18.04.07 – 8.05.07 – Dismissed  
*Impounding* – burden of proof – finance house failing to establish lack of high degree of fault
- 2007/36 KDL European Limited and Kevin Lumsden  
HGV – FB – 30.04.07 – 29.05.07 – Allowed  
*Decision – inadequate reasons* – failure to consider positive factors
- 2007/38 James Peter Daines  
HGV – JB – 16.03.07 – 20.04.07 – Dismissed  
*Decision – adequate reasons* – drivers' hours' offences
- 2007/42 Michelle Jane Clarke T/a Red Rock Travel  
HGV – HC – 22.05.07 – 6.06.07 – Dismissed  
*Decision – adequate reasons* – repute – fronting for others
- 2007/46 JN Dairies Limited  
HGV – MB – 13.06.07 – 27.06.07 – Allowed  
*Miscellaneous* – disproportionate conclusion
- 2007/55 Ack (Haulage) Limited  
HGV – MB – 13.06.07 – 27.06.07 – Allowed  
*Decision – inadequate reasons* – failure properly to consider merits
- 2007/56 Glebe Transport Limited  
HGV – FB – 30.04.07 – 29.05.07 – Dismissed  
*Decision – adequate reasons* – financial standing
- 2007/57 DC Haulage & Storage Limited  
HGV – FB – 30.04.07 – 29.05.07 – Dismissed  
*Decision – adequate reasons* – repute – operating without licence
- 2007/61 Richard Derek Land  
HGV – HC – 22.05.07 – 6.06.07 – Allowed  
*Disqualification* – review under s.28(6) of 1995 Act
- 2007/62 Thomas McKinney & Son Limited  
HGV – JB – 11.05.07 – 19.06.07 – Dismissed  
*Impounding* – failure to establish grounds for return of vehicles
- 2007/75 Matthew John Cooney T/a MC Blasting  
HGV – HC – 31.07.07 – 9.08.07 – Dismissed  
*Impounding* – attached HIAB crane not returnable as “contents”

- 2007/78 Clifford Paul Adamson  
HGV – HC – 22.05.07 – 6.06.07 – Allowed  
Termination by non-payment or withdrawal – fee demand not sent
- 2007/79 B James Skip Hire (Cardiff) Limited  
HGV – JB – 11.05.07 – 12.06.07 – Dismissed  
Decision – adequate reasons
- 2007/80 GPA Transport Limited  
HGV – JB – 11.05.07 – 7.06.07 – Dismissed  
Decision – adequate reasons
- 2007/82 Ieuan Wyn Williams T/a Ieuan Williams Coaches  
PSV – MB – 13.06.07 – 31.07.07 – Allowed  
Repute – stale evidence – inadequate reasons
- 2007/83-84 & 122 Anthony Head, June Head and Sandra Johns T/a Reliance  
Coaches, & Others  
HGV – HC – 22.05.07 – 6.06.07 – Dismissed  
Decision – adequate reasons
- 2007/87 Rukhsana Bibi and Mohammed Saleem T/a Saleem Haulage  
HGV – JB – 11.05.07 – 7.06.07 – Dismissed  
Decision – adequate reasons
- 2007/98 Ijaz Nabi T/a Ijaz Poultry  
HGV – MB – 13.06.07 – 27.06.07 – Dismissed  
Decision – adequate reasons
- 2007/104 Steven Lloyd T/a London Skips  
HGV – MB – 13.06.07 – 27.06.07 – Allowed  
*Decision – inadequate reasons* – failure to balance factors  
*Notice of issues and evidence* – contents of call-up letters considered
- 2007/105 Florian Ciornei T/a Lorex  
HGV – JB – 26.06.07 – 11.07.07 – Dismissed  
Decision – adequate reasons
- 2007/129 Surrey County Council v. David Collingwood T/a Construction and  
Demolition Services, Fairlight Transport Services Limited and Rodney Smith  
HGV – HC – 29.08.07 – 10.09.07 – Dismissed  
Decision – adequate reasons
- 2007/133 Recycled Packaging (Scotland) Limited  
HGV – HC – 31.07.07 – 9.08.07 – Dismissed  
*Suspension* – no need for evidence of consequences – non-specialist  
vehicles
- 2007/142 Express Equine Europe Limited  
HGV – JB – 26.06.07 – 11.07.07 – Dismissed  
Decision – adequate reasons
- 2007/150 & 151 Michael Brandon Chick and Croydon Coaches Limited

- PSV – MB – 12.09.07 – 27.09.07 – Mixed  
Maintenance – order of curtailment excessive – inadequate reasons
- 2007/153 Alan Hanley T/a A Hanley & Son  
HGV – HC – 11.07.07 – 27.07.07 – Dismissed  
Financial Standing – failure to show sufficient funds
- 2007/160 William Fury  
HGV – HC – 8.08.07 – 29.08.07 – Dismissed  
Impounding – failure to establish non-contravention of Act
- 2007/168-169 and 170 M & M International Limited, Walker Movements Limited and  
CH Walker (Transport) Limited  
HGV – JB – 30.08.07 – 24.09.07 – Allowed  
Operating Centre – failure to balance evidence
- 2007/172-173-174-175-181 & 255 Romantiek Transport BVBA, GA Banham T/a  
Mendlesham Group Car & Commercial, Lotransport BVBA, JB Trans BVBA &  
M Sheppard T/a MJS Trailer Leasing  
HGV – JB – 3.10.07 – 4.12.07 – Dismissed  
*Impounding* – cabotage – operation on a temporary basis  
*International Issues* – community authorisation insufficient
- 2007/176 Bradley Fold Travel Limited  
PSV – HC – 8.08.07 – 29.08.07 – Allowed  
Decision – inadequate reasons
- 2007/192 Lee Reeder T/a CL Haulage  
HGV – MB – 12.09.07 – 30.09.07 – Dismissed  
*Financial standing* – revocation after non-receipt of correspondence
- 2007/205 Evergreen Leasing Limited  
HGV – HC – 31.07.07 – 9.08.07 – Allowed  
*Impounding* – VOSA's approach to knowledge of leasing companies set out
- 2007/208 Dean Roy Fewings T/a Fewings Services Limited  
HGV – FB – 15.11.07 – 12.12.07 – Dismissed  
Decision – adequate reasons
- 2007/212 Huxley Travel Limited  
PSV – HC – 8.08.07 – 29.08.07 – Dismissed  
*Repute – concealment of insolvency* – unauthorised use
- 2007/224 Capel Rail Services Limited  
HGV – JB – 18.10.07 – 20.12.07 – Dismissed  
Decision – adequate reasons – unauthorised use of vehicles
- 2007/241 Michael Kemp T/a Berkshire Minibus  
PSV – JB – 30.08.07 – 19.09.07 – Dismissed  
Decision – adequate reasons – failure to reply to correspondence
- 2007/252 & 253 Gaetana Maiorana T/a Valley Point Coaches; Valley Point Trading  
Limited

## Part 2: Chronological List of Decisions

- PSV – JB – 18.10.07 – 13.12.07 – Dismissed  
Decision – adequate reasons – loss of repute
- 2007/257 Geoff Aston T/a G & L Transport Services Limited  
HGV – FB – 15.10.07 – 12.12.07 – Dismissed  
Decision – adequate reasons – impounding
- 2007/261 – Anthony James Floyd T/a AJ Minibuses  
PSV - FB – 15.11.07 – 12.12.07 – Allowed  
*Disqualification* – inexperience and youth – reduction ordered
- 2007/268 John Stephen Hassall T/a TJS Skip Hire  
HGV – FB – 15.11.07 – 12.12.07 – Allowed  
Termination by non-payment or withdrawal – taking into account  
unsubstantiated allegation
- 2007/294 Ethos Recycling Limited  
HGV – FB – 22.11.07 – 12.12.07 – Remitted  
Decision – inadequate reasons – imposition of hours' condition
- 2007/295 Fair Rider Bus Company Limited & Pavamjit Singh T/a Paul's Travel  
PSV – JB – 18.10.07 – 19.12.07 – Dismissed  
Decision – adequate reasons – maintenance – bad case
- 2007/311 Southdown Motor Services Limited T/a Stagecoach  
PSV – FB – 22.11.07 – 18.12.07 – Allowed  
PSV – penalty under s.155, 2000 Act inappropriate
- 2007/314 Jarnal Singh T/a Prestige Transport Solutions  
HGV – FB – 22.11.07 – 18.12.07 – Dismissed  
Decision – adequate reasons – records and tachographs
- 2007/316 Keith Chapman & Ralf Alwani T/a Highway Deliveries  
HGV – HC – 10.01.08 – 28.01.08 – Allowed  
*Repute* – disproportionate to revoke – need to consider overall result
- 2007/318 Eurotaxi Limited  
PSV – HC – 19.12.07 – 7.01.08 – Dismissed  
*Procedure* – allegation of bias against TC – misconceived  
PSV – penalty under s.155, 2000 Act – bad case
- 2007/325 Est Bus Limited  
PSV – FB – 23.11.07 – 18.12.07 – Mixed  
PSV – penalty under s.155, 2000 Act – condition varied
- 2007/348 Jennifer M Graves  
HGV – HC – 19.12.07 – 7.01.08 – Dismissed  
Decision – adequate reasons
- 2007/351 & 356 Rex Haulage Limited & J Grewal & T Grewal and Rex Haulage  
Limited  
HGV – FB – 22.11.07 – 21.12.07 – Allowed  
*Disqualification* – director out of office at time of public inquiry

- 2007/352 John McCarthy  
HGV – HC – 20.12.07 – 7.01.08 – Dismissed  
Decision – adequate reasons
- 2007/355 Medina Dairy Limited  
HGV – HC – 19.12.07 – 7.01.08 – Allowed  
Decision – inadequate reasons – error in number of vehicles
- 2007/370 Phil Smith Transport Limited  
PSV – HC – 20.12.07 – 7.01.08 – Allowed  
*Repute* – conduct – disregard of restrictive covenant
- 2007/414 Barclays Asset & Sales Finance  
HGV – HC – 10.01.08 – 28.01.08 – Dismissed  
*Impounding* – out of time application – 23 weeks
- 2007/416 BSL Logistics Limited  
HGV – FB – 8.02.08 – 20.02.08 – Dismissed  
Decision – adequate reasons
- 2007/426 Hazell & Jeffries Limited  
HGV – FB – 20.03.08 – 17.04.08 – Allowed  
Decision – inadequate reasons – operating centre
- 2007/428 John Maffia T/a John's School of Motoring  
PSV – HC – 10.01.08 – 28.01.08 – Dismissed  
*Human rights* – fairness – diabetic sugar shortage by TC
- 2007/433 James Michael Kearney  
HGV – HC – 10.01.08 – 28.01.08 – Dismissed  
Decision – adequate reasons
- 2007/441 & 442 Kev's Travel Limited & Kevin Lawrence Brookes  
PSV – FB – 20.03.08 – 17.04.08 – Dismissed  
Decision – adequate reasons
- 2007/459 KDL European Limited & Kevin Lumsden  
HGV – HC – 11.04.08 – 7.05.08 – Dismissed  
*Repute* – numerous tachograph offences – need for deterrence  
*Decision* – *inadequate reasons* – cases reviewed
- 2007/484 Jennifer Mary Graves  
HGV – MB – 9.04.08 – 30.04.08 – Allowed  
Impounding – proof of ownership

## 2008

- 2008/4 H&A Holdings Limited  
HGV – HC – 11.04.08 – 22.04.08 – Allowed  
*Professional competence* – no power to disqualify transport manager

*Repute* – failure to consider need to put operator out of business

- 2008/5 Mark Skellern Limited & Mark Skellern  
HGV – HC – 11.04.08 – 22.04.08 – Dismissed  
*Professional competence* – no power to disqualify transport manager  
*Disqualification* – no power to disqualify transport manager
- 2008/11 Ansvar Holdings Limited v. Secretary of State for Transport  
HGV – FB – 2.05.08 – 29.05.08 – Allowed  
*Impounding* – legal status of recovery vehicle clarified  
*Procedure* – allegation of bias – law and practice considered
- 2008/26 EPI Coaches Limited  
PSV – MB – 9.04.08 – 29.04.08 – Allowed  
*Decision* – *inadequate reasons* – no evidence of fronting
- 2008/48 T&T Coaches Limited  
HGV – HC – 22.04.08 – 7.05.08 – Allowed  
*Notice of issues & evidence* – *repute* not raised in call-up letter
- 2008/60 & 519 Katherine Oliver T/a JW Swan & Partners  
HGV – MB – 13.08.08 – 9.09.08 – Mixed  
*Procedure* – allegation of bias – TC a witness as to fact  
*Procedure* – conduct of PI – excessive interruptions by TC
- 2008/70 Kevin & Beryl Hughes T/a Ashford Minibuses  
PSV – HC – 22.04.08 – 7.05.08 – Allowed  
Miscellaneous – misunderstanding by Traffic Area Office
- 2008/92 Glen Miller Harrison  
HGV – HC – 22.04.08 – 7.05.08 – Dismissed  
*Notice of issues & evidence* – deemed if to last known address  
*Professional competence* – deemed notice to transport manager
- 2008/94 Sania International Limited  
PSV – FB – 24.07.08 – 21.08.08 – Mixed  
Disqualification – order excessive
- 2008/126 All Pallets Limited  
HGV – HC – 22.04.08 – 7.05.08 – Mixed  
Operating Centre – issue remitted
- 2008/130 Lorna Eddie T/a Lorn Freight  
HGV – JB – 6.06.08 – 21.07.08 – Dismissed  
*Decision* – *inadequate reasons* – concise reasons may be sufficient
- 2008/151 Tuc Tuc Limited  
PSV – HC – 22.04.08 – 7.05.08 – Allowed  
PSV – penalty under s.155, 2000 Act – punitive
- 2008/176 Thomas Malcolm T/a Premier Travel  
PSV – JB – 6.06.08 – 9.07.08 – Dismissed  
Decision – adequate reasons



- 2008/183 Jennifer Graves T/a J Holland Haulage  
HGV – JB – 6.06.08 – 3.07.08 – Dismissed  
Decision – adequate reasons
- 2008/193 Lewis Travel UK Plc  
PSV – FB – 2.05.08 – 29.05.08 – Allowed  
Decision – adequate reasons – proportionality
- 2008/194 Manjit Singh T/a Manjit Haulage  
HGV – FB – 22.05.08 – 20.06.08 – Mixed  
Decision – adequate reasons – proportionality
- 2008/198 Gafoor Poultry Products Limited  
HGV – JB – 3.06.08 – 1.07.08 – Dismissed  
Decision – adequate reasons – impounding
- 2008/223 James Grigor Innes T/a JC Innes & Sons  
HGV – JB – 6.06.08 – 23.07.08 – Dismissed  
Decision – adequate reasons – interference with tachographs
- 2008/236 Lakes Supertours Limited and Andrew Dobson  
PSV – HC – 8.07.08 – 28.07.09 – Dismissed  
Decision – adequate reasons – bad maintenance
- 2008/249 + 261 Alan Trevor Holder T/a H & H Transport and Harold J Williams T/a  
HH Williams & Sons  
HGV – FB – 24.07.08 – 20.08.08 – Mixed  
Decision – adequate reasons – proportionality
- 2008/255 Paul Simon Short T/a P & J Transport  
HGV – FB – 22.05.08 – 20.06.08 – Mixed  
Disqualification – inappropriate
- 2008/258 Mulroy Construction Limited  
HGV – JB – 3.06.08 – 1.07.08 – Dismissed  
Decision – adequate reasons – failure to notify change of address
- 2008/268 Funstons Limited  
HGV – HC – 8.07.08 – 28.07.08 – Dismissed  
*Operating Centre* – driver parking outside home during week  
*Procedure* – no appeal to Tribunal from formal warning
- 2008/299 David Henry Hunter & Partners  
HGV – MB – 13.08.08 – 9.09.08 – Dismissed  
Decision – adequate reasons – financial standing
- 2008/314 Kishore Balu T/a Alpha Transport Services Limited  
HGV – MB – 13.08.08 – 9.09.08 – Dismissed  
Decision – adequate reasons – failure to answer letters
- 2008/315 LC Mistry  
HGV – FB – 21.08.08 – 12.09.08 – Mixed

Professional competence – muddled order

- 2008/232 Stuart Lloyd Griffiths T/a Logistics and Supply Chain  
HGV – MB – 10.09.08 – 23.10.08 – Dismissed  
Decision – adequate reasons – repute
- 2008/335 Greaves Surveying & Engineering Limited  
HGV – JB – 2.09.08 – 24.09.08 – Allowed  
*Operating centre* – suitability of public highway access considered
- 2008/340 Jim Kilpatrick T/a J Kilpatrick Coach Hire  
PSV – JB – 5.09.08 – 30.09.08 – Dismissed  
Decision – adequate reasons – repute – bad case
- 2008/341 & 347 Oakmist Limited and George Cran  
HGV – JB – 5.09.08 – 3.10.08 – Dismissed  
Decision – adequate reasons – operation of sham company
- 2008/342 Alistair James Brown T/a Browns of Edinburgh  
PSV – JB -2.09.08 – 10.10.08 – Dismissed  
*Drivers' hours and tachographs* – systemic falsification and use of ghost names
- 2008/353 Andrew Rust & Louise McKinney T/a LA Coaches  
PSV – JB – 2.09.08 – 23.09.08 – Dismissed  
Decision – adequate reasons – repute
- 2008/366 Barrington J Ross  
HGV – FB – 21.08.08 – 12.09.08 – Dismissed  
Decision – adequate reasons – failure to attend PI
- 2008/384 Barkridge UK Limited  
HGV – FB – 24.07.08 – 18.08.08 – Dismissed  
Decision – adequate reasons – failure to answer letters
- 2008/389 Guildford Timber Frame Limited  
HGV – MB – 13.08.08 – 9.09.08 – Dismissed  
Decision – adequate reasons – financial standing
- 2008/407 Surrey County Council c. Ronald Rybak-Rajewski T/a Blacktrak Surfacing Contractors  
HGV – HC – 7.10.08 – 28.10.08 – Dismissed  
*Operating centre* – suitability by attachment of condition
- 2008/410 Brian Hill Waste Management Limited v. Secretary of State for Transport  
HGV – MB – 30.01.09 – 16.02.09 – Dismissed  
*Financial standing* – action by TC not precluded by administration  
*Repute* – operating vehicles of insolvent company – fronting
- 2008/413 Al-Le Logistics Limited, Alan John Bennett and Michael John Godden  
HGV – MB – 10.09.08 – 3.11.08 – Allowed  
*Procedure* – adjournment refused despite VOSA's failure to release seized documents  
*Drivers' hours and tachographs* – undertaking not absolute

- 2008/421 MR Harris T/a Metropolitan Scaffolding  
HGV – HC – 7.10.08 – 28.10.08 – Dismissed  
Decision – adequate reasons – failure to answer letters
- 2008/433 David Turner T/a DT Services  
HGV – HC – 7.10.08 – 28.10.08 – Dismissed  
Decision – adequate reasons – curtailment
- 2008/435 Goosecroft Coaches Limited  
PSV – FB – 14.11.08 – 10.12.08 – Dismissed  
Decision – adequate reasons – bus penalty
- 2008/470 Heart of Wales Bus and Coach Limited  
PSV – HC – 7.10.08 – 28.10.08 – Dismissed  
*Maintenance* – undertaking for 6 monthly audit properly imposed
- 2008/471 Richard John Dobb T/a EC Logistics  
HGV – HC – 23.10.08 – 13.11.08 – Mixed  
*Disqualification* – set aside as incorrect factual basis
- 2008/472 Kevin Scott  
HGV – HC – 7.10.08 – 28.10.08 – Allowed  
*Procedure* – failure to balance and explain favourable result in linked PI  
*Disqualification* – set aside as incorrect factual basis
- 2008/476 M8 Scotland Limited  
HGV – FB – 14.11.08 – 5.12.08 – Dismissed  
Decision – adequate reasons – operating dissolved company
- 2008/492 Robin Josef Kurzaj T/a RJK Construction  
HGV – HC – 23.10.08 – 13.11. 08 – Dismissed  
Decision – adequate reasons – failure to supply information
- 2008/501 Munir Hassain T/a Alquasim Poultry  
HGV – HC – 23.10.08 – 13.11. 08 – Dismissed  
Decision – adequate reasons – persistent non-compliance
- 2008/503 Huw's Scrap Metal Services Limited  
HGV – HC – 23.10.08 – 13.11.08 – Dismissed  
Decision – adequate reasons – operating centre unsuitable
- 2008/510 John Malcolm Blackstock  
HGV – HC – 7.10.08 – 28.10.08 – Dismissed  
Decision – adequate reasons – termination by non-payment of fee
- 2008/525 Barrhead Bus Company Limited & Others  
PSV – FB – 28.01.09 – 26.02.09 – Dismissed  
Decision – adequate reasons – persistent non-compliance
- 2008/526 Robert Kingman and Steven Kingman T/a Kingman Services  
HGV – HC – 23.10.08 – 13.11.08 – Allowed  
Decision – adequate reasons – proportionality

- 2008/542 Absolute Scaffolding Services Limited  
HGV – FB – 5.12.08 – 5.01.09 – Allowed  
*Operating centre – suitability – imposition of conditions*
- 2008/569 David Collingwood T/a Construction & Demolition Services  
HGV – HC – 5.11.08 – 20.11.08 – Dismissed  
*Termination by non-payment or withdrawal – no requirement for reminders*
- 2008/580 & 581 Tajinder Singh Dhaliwal & New Bharat Skips Limited  
HGV – HC – 20.11.08 – 3.12.08 – Dismissed  
*Repute – serious offences – comparison between company and individual*
- 2008/583 Beeline Sameday Limited and Harvinder Pasricha  
HGV – HC – 23.10.08 – 13.11.08 – Dismissed  
Decision – adequate reasons – persistent non-compliance
- 2008/593 Martin John Graves  
HGV – HC – 20.11.08 – 3.12.08 – Dismissed  
*Disqualification – review – principles to be applied – lead case*
- 2008/622 David Michael Feasey T/a Feasey Transport  
HGV – FB – 5.12.08 – 30.12.08 – Dismissed  
Decision – adequate reasons – persistent non-compliance
- 2008/623 Robert Dunlop T/a ARM Dunlop  
HGV – FB – 14.11.08 – 5.12.08 – Dismissed  
Decision – adequate reasons – persistent non-compliance
- 2008/655 A2Z Travel (UK) Limited  
PSV – MB – 13.01.09 – 12.02.09 – Dismissed  
Decision – adequate reasons – persistent non-compliance – maintenance
- 2008/668 Sukhpal Singh T/a Deep Transport  
HGV – MB – 13.01.09 – 30.01.09 – Dismissed  
Decision – adequate reasons – serious non-compliance
- 2008/688 & 745 David Pritchard and Brian Smith  
HGV – JB – 10.12.08 – 5.01.09 – Mixed  
*Directors duties – TC's jurisdiction extends to past and present directors*
- 2008/778 Beta Buses Limited & Bayview Enterprises Limited  
PSV – FB – 28.01.09 – 18.02.09 – Dismissed  
Decision – adequate reasons – serious non-compliance
- 2008/780 South Lincs Plant Hire & Sales Limited  
HGV – HC – 13.02.09 – 3.03.09 – Allowed  
*Drivers' hours and tachographs – proportionality*
- 2008/792 K Oxley  
HGV – MB – 30.01.09 – 16.02.09 – Allowed  
*Procedure – letter to be regarded as request for PI*

- 2008/795 Patrick John Ely T/a Ely Haulage and Plant Hire  
HG V – JB – 24.02.09 – 5.03.09 – Dismissed  
Decision – adequate reasons – non-payment of annual fee
- 2008/816 Linda Perry T/a Hannah Transport  
HG V – HC – 13.02.09 – 3.03.09 – Dismissed  
Decision – adequate reasons – fronting and non-compliance
- 2008/829 Brian J. Kennedy t/a Kennedy Commercials  
HG V – FB – 27.03.09 – 24.04.09 – Dismissed  
Material change in circumstances – *Financial standing*
- 2008/860 Star Forwarding Limited  
HG V – HC – 13.02.09 – 3.03.09 – Dismissed  
Decision – adequate reasons – failure to answer letters
- 2009**
- 2009/008 William Ball T/a Severn Valley Transport  
HG V – JB – 24.02.09 – 16.03.09 – Dismissed  
Decision – adequate reasons – unauthorised use and obstruction
- 2009/011 Katherine Oliver & Jw Swan & Partners  
HG V – MB – 12.03.09 – 30.03.09 – Dismissed  
*Disqualification* – decision on own facts.
- 2009/018 Rastab Ali T/a S A Halal Meats  
HG V – HC – 13.02.09 – 3.03.09 – Dismissed  
Decision – adequate reasons – financial resources
- 2009/023 Howard Collins  
HG V – MB – 12.03.09 – 06.04.09 – Dismissed  
*Impounding* – exemption for vehicles with fitted equipment.
- 2009/030 Pilkingtons Accrington Ltd. t/a King Travel  
PSV – MB – 12.03.09 – 06.03.09  
PSV – Need for reasons – correct approach to application to abridge time
- 2009/112 Click Services Ltd  
PSV – FB – 20.03.09 – 08.04.09 – Dismissed  
*Financial Standing* – large debt to HM Revenue and Customs.
- 2009/154 PD Aylward t/a Aylward Contractors  
HG V – HC – 02.04.09 – 17.04.09 – Dismissed  
*Disqualification*
- 2009/156 Angus Agencies (1997) Ltd.  
HG V – FB – 15.05.09 – 12.06.09 – Allowed in part  
Curtailement too severe in the circumstances
- 2009/173 B & J Eyres t/a BJR Haulage  
HG V – HC – 02.04.09 – 17.04.09 – Allowed  
*Miscellaneous* – Problems with correspondence

- 2009/176 Ian Cotton t/a A1 Buses of Skelmersdale  
PSV – FB – 29.05.09 – 23.06.09 – Allowed  
*Decision – inadequate reasons*
- 2009/182 WJ Wooster & sons Ltd.  
HGV – FB – 29.05.09 – 23.06.09 – Dismissed  
Curtailement of licence upheld
- 2009/189 J Coyle Haulage Ltd and John Francis Coyle  
HGV – FB – 12.05.09 – 09.06.09 – Allowed  
*Repute*
- 2009/190 Z Kadar  
HGV – FB – 12.05.09 – 09.06.09 – Dismissed  
*Impounding*
- 2009/191 Nationwise Logistics t/a R&H Haulage  
HGV – HC – 25.06.09 – 07.07.09 – Dismissed  
*Financial Standing*
- 2009/204 Michael John Verrechia  
HGV – FB – 29.05.09 – 23.06.09 – Allowed  
*Miscellaneous – confusion over correspondence*
- 2009/210 Mark Bowring t/a Wyscaff  
HGV – JB – 08.06.09 – 22.06.09 – Dismissed  
*Impounding*
- 2009/215 LE Jones Ltd. & LE Jones International Ltd.  
HGV – JB – 08.06.09 – 29.06.09 – Allowed  
*Repute – not lost – severe curtailment*
- 2009/225 Priority Freight Ltd. & Paul Williams  
HGV – MB – 06.07.09 – 31.07.09 – Allowed  
*Decision – inadequate reasons – drivers hours*
- 2009/226 Paul Castleton  
HGV – HC – 25.06.09 – 07.07.09 – Dismissed  
*Financial standing – Miscellaneous – material change in circumstances*
- 2009/227 Ptarmigan Transport Solutions Ltd t/a Bankfoot Buses  
PSV – FB – 15.05.09 – 12.06.09 – Allowed  
*Miscellaneous – adjournment/investigation before decision on adjournment*
- 2009/237 Jarvill Ltd. t/a Coloured Steel Products  
HGV – HC – 25.06.09 – 07.07.09 – Dismissed  
*Maintenance – Miscellaneous – prohibitions, undertakings, material change*
- 2009/238 Brian Smith  
PSV – JB – 08.06.09 – 22.06.09 – Dismissed  
*Repute*

- 2009/240 AM Kydd t/a Sandy Kydd Road Transport  
HG V – HC – 21.08.09 – 03.09.09 – Dismissed  
*Disqualification – Miscellaneous – 5 years disqualification upheld – operator’s and drivers’ conduct should be heard together*
- 2009/246 Felix Connors  
HG V – JB – 08.06.09 – 22.06.09 – Dismissed  
*Miscellaneous – Failure to respond to correspondence*
- 2009/252 Adrian O’Malley t/a O’Malley Haulage  
HG V – FB – 11.09.09 – 10.10.09 – Allowed  
*Decision – inadequate reasons – Burden of Proof reversed*
- 2009/264 Alistair Ronald Brown  
PSV – HC – 21.08.09 – 03.09.09 – Dismissed  
*Repute – T C correct to take into account family background.*
- 2009/289 Bradley Fold Travel Ltd  
PSV – MB – 06.07.09 – 23.07.09 – Dismissed  
*Repute – Procedure – approach to appeal hearing – Tribunal entitled to conduct own balancing exercise.*  
Appeal to Court of Appeal dismissed – see [Chapter 22 Appeals from Tribunal](#)
- 2009/307 Anne Jones Edwards & Edward Anthony Edwards  
HG V – JB – 10.08.09 – 01.09.09 – Dismissed  
*Maintenance – Disqualification*
- 2009/369 Munro & sons (Highland) Ltd.  
HG V – HC – 21.08.09 – 03.09.09 – Dismissed  
*Maintenance – Disqualification*
- 2009/385 1<sup>st</sup> 4 Builders Ltd.  
HG V – JB – 10.08.09 – 24.08.09 – Dismissed  
*Financial standing*
- 2009/401 Santokh Singh t/a Sunny Travel  
PSV – FB – 11.09.09 – 10.10.09 – Dismissed, save that penalty & disqualification reduced  
*PSV – Repute – Professional competence – disqualification - Financial penalty*
- 2009/410 Warstone Motors Ltd t/a The Green Bus Service  
PSV – FB – 11.09.09 – 10.10.09 – Dismissed  
*Repute – Financial standing*
- 2009/411 L S Court Lt t/a Courts of Fillongley  
HG V – FB – 11.09.09 – 10.10.09 – Dismissed  
*Termination by non-payment*
- 2009/412 BL & SS Robson t/a Robson Farms  
HG V – FB – 11.09.09 – 10.10.09 – Dismissed  
Appeal against formal warning

- 2009/417 James Innes t/a J C Innes & Sons  
HGV – HC – 21.08.09 – 03.09.09 – Remitted for rehearing
- 2009/455 Martini Scaffolding Ltd.  
HGV – FB – 22.09.09 – 20.10.09 – Dismissed  
*Maintenance – disqualification*
- 2009/465 Secure Transport & trading Ltd.  
HGV – FB – 22.09.09 – 20.10.09 – Dismissed  
*Financial standing – Professional competence*
- 2009/466 Stephen Leonard Hughes t/a Hughes Transport  
HGV – FB – 22.09.09 – 20.10.09 – Dismissed  
*Financial standing*
- 2009/479 John Popple t/a J&S Popple  
HGV – FB – 22.09.09 – 20.10.09 – Dismissed  
*Termination by non-payment*
- 2009/483 Kyle Seafoods Ltd.  
HGV – FB – 27.10.09 – 27.11.09 – Dismissed  
*Operating Centre – unauthorised use – application refused*
- 2009/485 B. Kennedy Commercials Ltd  
HGV – FB – 25.10.09 – 27.11.09 – Allowed  
*Procedure – Recusal*
- 2009/487 S & A Bruford Transport  
HGV – MB – 5.11.09 – 26.11.09 – Dismissed  
*Miscellaneous – Failure to reply to letters*
- 2009/488 D&A Lawrence t/s The Roseglen Hotel  
PSV – MB – 05.11.09 – 16.11.09 – Dismissed  
*Miscellaneous – Failure to respond*
- 2009/492 Clememte Fanciulli t/a PB Haulage  
HGV – MB – 5.11.09 – 16.11.09 - Dismissed  
*Termination by non-payment*
- 2001/493 Juliet Joyce Hutchison  
HGV – MB – 5.11.09 – 16.11.09- Allowed  
*Miscellaneous – change of address*
- 2009/497 Thorpe Lane Commercials Ltd  
HGV – FB – 13.11.09 – 9.12.09 – Allowed  
*Miscellaneous – Material change in circumstances – address*
- 2009/498 G. Sunderland & J. Warburton  
HGV – FB – 13.11.09 – 11.12.09 – Allowed  
*Disqualification – Licence not revoked.*



- 2009/500 Reids Transport Minishant Ltd & A. Fraser & R. Laidlaw  
HGV – FB – 27.10.09 – 27.11.09 – Dismissed (revocation) Allowed  
(disqualification)  
*Maintenance – Disqualification*
- 2009/501 Fenton Transport Ltd.  
HGV – FB – 27.10.09 – 27.11.09 – Dismissed  
*Drivers hours and tachographs*
- 2009/502 Innes Transport Ltd.  
HGV – FB – 27.10.09 – 27.11.09 – Allowed  
*Repute – Guilt by association*
- 2009/503 TS Transport (Scotland) Ltd  
HGV – FB – 27.10.09 – 27.11.09 – Allowed  
*Suspension and Curtailment*
- 2009/504 Darren Ronald Ivor Alexander t/a Alexander Haulage  
HGV – HC – 12.01.10 – 26.01.10 – Allowed-remitted  
*Miscellaneous – Traffic Commissioner misinformed as to absence of Appellant*
- 2009/505 The Racing Bug Ltd  
HGV – FB – 13.11.09 – 09.12.09 – Allowed  
*Termination for non-payment*
- 2009/506 Grainline Ltd  
HGV – FB – 13.11.09 – 09.12.09 – Allowed  
*Termination for non-payment*
- 2009/507 William King t/a B King Scaffolding  
HGV – HC – 04.02.10 – 16.02.10 – Dismissed  
*Miscellaneous – Failure to respond*
- 2009/509 Aspey trucks Ltd  
HGV – FB – 13.11.09 – 14.12.09 – Allowed-remitted  
*Repute*
- 2009/510 Margaret McKindless t/a McKindless Express Coaches  
PSV – FB – 22.01.10 – 19.02.10 – Allowed  
*PSV – Financial Penalty*
- 2009/513 Ptarmigan Transport Solutions t/a Bankfoot Buses  
PSV – FB – 22.01.10 – 19.02.10 – Dismissed  
*Financial Standing – Professional Competence – Repute – Disqualification*
- 2009/514 Peter Dry Ltd t/a Autosmart  
HGV – HC – 12.01.10 – 26.01.10 – Dismissed  
*Financial Standing – Miscellaneous – Failure to provide material to support application*

- 2009/515 Les Searle Plant Hire & Sales Ltd  
HGV – HC – 04.02.10 – 23.02.10  
*Operating Centre – conditions*
- 2009/516 Farooq Ahmed & Haroon Ahmed  
HGV – HC – 04.02.10 – 23.02.10 – Allowed  
*Notice of issues and evidence – Disqualification*
- 2009/518 Rose & Sons Ltd  
HGV – HC – 04-02-10 – 16.02.10 – Dismissed  
*Termination for non-payment – Right to Appeal.*
- 2009/519 Vari Adams t/a Euroboat Transport  
HGV – FB – 22.01.10 – 19.02.10 – Dismissed  
*Repute – Professional Competence*
- 2009/520 John & Shane Moore t/a John Moore Event (Furniture) Hire  
HGV – HC – 12.01.10 – 26.01.10 – Dismissed  
*Termination for non-payment.*
- 2009/521 Whitaker and Normile Racehorses  
HGV – FB – 22.01.10 – 19.02.10 – Dismissed  
*Miscellaneous – Failure to respond*
- 2009/522 Jason William Barrett  
HGV – HC – 04.02.10 – 16.02.10 – Dismissed  
*Financial Standing*
- 2009/523 Roby's Com Ltd  
HGV – HC – 04.02.10 – 16.02.10 – Dismissed  
*Termination for non-payment*
- 2009/524 Ocean transport Ltd  
HGV – HC – 16.02.10 – 23.02.10 – Dismissed  
*Financial Standing – Procedure*
- 2009/525 James G. Innes  
HGV – FB – 28.06.10 – 28.07.10 – Dismissed  
*Impounding*
- 2009/526 Davis roofing Ltd  
HGV – FB – 10.03.10 – 07.04.10 – Dismissed  
*Miscellaneous – Non-compliant advertisement*
- 2009/527 Lisa Rafferty t/a 1<sup>st</sup> Class Limos  
PSV – JB – 25.03.10 – 09.04.10 – Dismissed  
*PSV – Stretch Limos & Disco Buses*
- 2009/528 KHJ Ltd  
HGV – FB – 10.03.10 – 07. 04.10 – Dismissed  
*Repute – Disqualification*

2009/529 Gary Alan Challingsworth  
HG V – HC – 16.02.10 – 23.02.10 – Dismissed  
*Financial Standing*

2009/530 Boomerang Travel Ltd  
PSV – JB – 23.03.10 – 12.04.10 – Allowed – remitted  
*Repute* – extending period for rehabilitation

## 2010

T/2010/001 Denise & Peter Walsh t/a Walsh Skip Hire  
HG V – MB – 31.03.10 – 30.04.10 – Dismissed  
*Repute* – *Disqualification*

T/2010/002 Colin Fletcher t/a Mchuk Haulage & Paul Fletcher  
T/2010/004 David Doring t/a Doring Transport  
HG V – JB – 23.03.10 – 15.04.10 – Dismissed  
*Repute*

T/2010/003 Peter Gerecke t/a West Coast Antiques  
HG V – MB – 31.03.10 – 26.04.10 – Dismissed  
*Impounding*

T/2010/005 Gary James t/a Gary James Transport  
HG V – MB – 31.03.10 – 20.04.10 – Dismissed  
*Miscellaneous* – Material change in circumstances – *Financial Standing*

T/2010/006 James & Catherine Cosgrove t/a Fisher Tours  
PSV – JB – 26.03.10 – 09.04.10 – Dismissed  
*PSV* – assessment of penalty – *Miscellaneous* – general grounds of appeal

T/2010/008 William George Richards t/a G E A Richards  
HG V – MB – 31.03.10 – 26.04.10 – Dismissed  
*Operating Centre* – imposition of conditions

T/2010/009 Stevens Assured Services Ltd  
HG V – JB – 23.03.10 – 12.04.10 – Dismissed

T/2010/011 TW Walton & C Walton t/a TW & C Walton Builders  
HG V – MB – 31.03.10 – 20.04.10 – Dismissed  
*Termination for non-payment*

T/2010/012 Gary Stone Groundworks Ltd  
HG V – FB – 14.04.10 – 12.05.10 – Dismissed  
*Termination for non-payment*

T/2010/013 Malcolm Thomas Berry  
PSV – MB – 23.04.10 – 20.05.10 – Dismissed  
*Repute* – *Financial Standing*

T/2010/014 SDV Bernard Ltd

HGV – HC – 10.05.10 – 25.05.10 – Dismissed  
*Termination for non-payment*

T/2010/015 GAP Container Services Ltd & Frederick William Evans  
HGV – HC – 10.05.10 – 25.05.10 – 1<sup>st</sup> Appellant – Dismissed  
2<sup>nd</sup> Appellant – Allowed  
*Notice of issues and evidence*

T/2010/016 Alan Cooper t/a Alan Cooper Haulage  
T/2010/021 Jeanette Wootten t/a Woodhouse Furniture  
HGV – MB – 23.04.10 – 11.05.10 – Allowed  
*Termination for non-payment – general guidance*

T/2010/018 Horsebox Mobile Repair Services Ltd  
HGV – MB – 31.03.10 – 20.04.10 – Allowed  
*Termination for non-payment*

T/2010/019 AWE Grad Hire Ltd  
HGV – FB – 14.06.10 – 13.07.10 – Dismissed  
*Repute – Miscellaneous – Disqualification*

T/2010/020 Sukhwinder Singh r/a Sandwell Travel  
PSV – FB – 14.04.10 – 12.05.10 – Dismissed

T/2010/022 Coachman Travel Ltd & Richard Saunders  
PSV – HC – 09.06.10 – 30.06.10 – Allowed (re disqualification of  
Saunders)  
*Notice of issues and evidence.*

T/2010/023 Environment Solutions Ltd  
HGV – FB – 14.06.10 – 13.07.10 – Allowed  
*Financial Standing*

T/2010/024 Hedley Simcock  
HGV – HC – 10.05.10 – 25.05.10 – Dismissed  
*Financial Standing – Miscellaneous – various matters under s.26*

T/2010/025 Skip It (Kent), Skip It (Haulage) & Skip It Property Investments Ltd  
HGV – MB – 20.10.10 – 22.11.10 – Appeal by Kent Allowed, others  
Dismissed  
*Repute – Miscellaneous – Power to make findings in relation to repute*

T/2010/028 Christopher James Bishop Green t/a Jamie Green Trucking  
HGV – MB – 27.05.10 – 11.06.10 – Dismissed  
*Termination for non-payment*

T/2010/029 David Finch t/a David Finch Haulage  
HGV – MH – 14.07.10 – 22.07.10 – Allowed  
*Disqualification- adequacy of reasons*

T/2010/030 & 032 Canalside UK Ltd & Lewis Robley Horn t/a L R Horn  
HGV – MH – 14.07.10 – 22.07.10 – Dismissed

*Financial standing – Maintenance – Professional Competence*

- T/2010/031 Joseph Kennedy t/a J K Parcels  
HGV – FB – 28.06.10 – 26.07.10 – Allowed - remitted  
*Miscellaneous* – failure to answer letters
- T/2010/033 Alderhall Services Ltd  
HGV – HC – 09.06.10 – 30.06.10 – Dismissed  
*Miscellaneous* – failure to answer letters or provide financial evidence
- T/2010/034 W P Commercials Ltd  
HGV – MB – 23.07.10 – 12.08 -10 – Allowed – condition varied  
*Operating Centre* – environmental conditions
- T/2010/035 Steven Alan Curtis t/a S&A Curtis Transport & Alan Frederick Curtis  
HGV – HC – 12.08.10 – 01.09.10 – Dismissed  
*Repute – Maintenance – Disqualification*
- T/2010/036 Suzanne Stoneman t/a Keith Travel  
PSV – HC – 12.08.10 – 25.08.10 – Allowed – in part  
*Repute – Financial Standing – Professional Competence – adequacy of reasons*
- T/2010/037 SE Maintenance Ltd  
HGV – FB – 14.06.10 – 13.07.10 – Allowed  
*Termination for non-payment*
- T/2010/038 Roadmaster Logistics Ltd  
HGV – FB – 04.08.10 – 31.08.10 – Dismissed  
*Repute – Financial Standing – Professional Competence – Disqualification*
- T/2010/040 Rowlands Telecoms Ltd  
HGV – FB – 04.08.10 – 31.08.10 – Dismissed  
*Miscellaneous* – Material change in circumstances
- T/2010/041 Darren Smith t/a DMS Scaffolding  
HGV – HC – 12.08.10 – 25.08.10 – Dismissed  
*Miscellaneous* – Material change in circumstances
- T/2010/042 Flowers 2000 Private Co Ltd t/a Cargo Carriers Transport  
HGV – JB – 14.09.10 – 04.10.10 – Dismissed  
*Repute – Financial Standing – Drivers Hours and Tachographs*
- T/2010/043 Stephen Mcvinnie t/a Knight Rider  
PSV – MH – 23.09.10 – 28.09.10 – Dismissed  
*Miscellaneous* – notice of Public Inquiry – *Financial standing*
- T/2010/044 Anthony J Long t/a AJ Long Services  
HGV – MH – 23.09.10 – 04.10.10 – Dismissed  
*Impounding – Procedure* – impounding of two vehicles – one hearing
- T/2010/046 Derbyshire Road Haulage Ltd

- HGV – MH – 07.10.10 – 22.10.10 – Dismissed  
*Financial Standing*
- T/2010/047 Nelson Rogers & Francis Rogers t/a Rogers Fencing  
HGV – MH – 23.09.10 – 01.10.10 – Dismissed  
*Miscellaneous* – failure to respond to correspondence
- T/2010/048 Anthony Edwards t/a Jim Bertie  
HGV – MH – 07.10.10 – 22.10.10 – Dismissed  
*Miscellaneous* – failure to provide an effective address for correspondence
- T/2010/049 Aspey Trucks Ltd  
HGV – MH – 23.09.10 – 05.10.10 – Dismissed  
*Repute* – convictions – *Procedure* – difference between application and existing licence
- T/2010/051 John Perrin t/a J P Scaffolding  
HGV – JB – 14.09.10 – 28.09.10 – Dismissed  
*Miscellaneous* – failure to notify change of address
- T/2010/052 & 053 Shaun Andrew Taylor & Mark Taylor  
HGV – MH – 07.10.10 – 22.10.10  
*Repute* – *Adequacy of reasons*
- T/2010/056 Mohamed Aslam t/a Instant Freight  
HGV – MB – 20.10.10 – 15.10.10 – Dismissed  
*Miscellaneous* – failure to respond to letters
- T/2010/058 Asif Mohammed Din t/a Ribble Valley Private Hire  
PSV – MH – 29.10.10 – 23.11.10 – Dismissed  
*Repute* – *Financial Standing*
- T/2010/059 George William Garmston t/a George Garmston Light Haulage  
HGV 0 FB – 19/11/10 – 17.12.10 – Dismissed  
*Repute* – *Financial Standing* – *Miscellaneous* – Discretionary grounds
- T/2010/060 Subic Solutions Ltd  
HGV – MH – 29.10.10 – 23.11.10 – Dismissed  
*Operating Centre*
- T/2010/062 Roderick & Claire Munro t/a Munro Midlands  
HGV – HC – 25.11.10 – 17.12.10 – Dismissed  
*Repute* – *Professional Competence*
- T/2010/063 Cornelius Pryde Hart & Abigail Hart t/a Zulu's Minibus  
PSV – MH – 29/11/10 – 16.12.10 – Dismissed  
*Drivers Hours and Tachographs*
- T/2010/064 JWF (UK) Ltd  
HGV – MH – 29.10.10 – 23.11.10 – Dismissed  
*Miscellaneous* - history of non-co-operation

- T/2010/066 Anthony James Evans t/a Evans Transport  
HGV – FB – 19.11.10 – 17.12.10 – Dismissed  
*Financial Standing.*
- T/2010/067 Pemberton Transport Ltd & Lynne Walker  
HGV – MH – 29.11.10 – 16.12.10 – Allowed in part – balance  
dismissed  
*Repute – Disqualification*
- T/2010/069 John Francis Donnelly  
PSV – JB – 13.12.10 – 12.01.11 – Dismissed  
*Repute – Miscellaneous – breach of conditions and undertakings*
- T/2010/071 Eurofast (Europe) Ltd, Lehal, Gill & Parmer  
HGV – MH – 10.01.11 – 28.01.11 – Parmer allowed – remainder  
dismissed  
*Repute – Directors duties – Notice of issues and evidence*
- T/2010/072 James Brown t/a Forth Travel  
PSV – HC – 25.11.10 – 17.12.10 – Allowed – remitted  
*Repute*
- T/2010/073 Paul Anthony Faulkner  
HGV – MH – 10.01.11 – 28.01.11 – Dismissed  
*Procedure- Grounds of Appeal – Suspension*
- T/2010/074 High Voltage Maintenance Systems Ltd  
HGV – FB – 25.02.11 – 24.03.11 – Allowed in part  
*Operating Centre – Conditions*
- T/2010/075 VST Building & Maintenance Ltd  
HGV – MH – 29.11.10 – 16.12.10 – Dismissed  
*Financial Standing*
- T/2010/076 Premier Beds Ltd  
HGV – JB – 13.12.10 – 10.01.11 – Dismissed  
*Miscellaneous – breach of undertakings*
- T/2010/077 MacEwan Coach Services  
PSV – FB – 25.03.11 – 28.04.11 – Allowed – remitted  
*Miscellaneous - Curtailment*
- T/2010/080 Blue bus Ltd  
PSV – FB – 25.03.11 – 25.04.11 – Allowed in part  
*PSV – Bus penalty*
- T/2010/081 Natalie Hunt t/a Wild Stretch Limousines  
PSV – JB – 14.12.10 – 10.01.11 – Dismissed  
*Financial Standing – (Decision published in redacted form)*
- T/2010/082 PES Trading UK Ltd  
HGV – FB – 31.01.11 – 22.02.11 – Allowed – remitted  
*Financial Standing*

- T/2010/083 Paul Frederick Boomer t/a Carousel  
HGV – FB – 31.01.11 – 22.02.11 – Dismissed  
*Repute*
- T/2010/084 & 086 Coach Express Ltd, AK Travel Ltd, A2B Travel Ltd, Mibbo  
Thandi and Amardeep Thandi  
PSV – JB – 30.03.11 – 28.04.11 – Dismissed  
*Repute, Maintenance, disqualification* – conditions and undertakings –  
revocation.
- T/2010/085 Daniel Peter Hill t/a Fairstead Lodge Transport  
HGV – FB – 25.02.11 – 24.03.11 – Allowed  
*Drivers Hours and Tachographs – Miscellaneous – Curtailment*
- T/2010/087 PIT.101 Ltd (Formerly – Ethos Recycling Ltd)  
HGV – MH – 18.03.11 – 31.03.11 – Dismissed  
*Financial Standing.*
- T/2010/088 Smiths Logistics Ltd  
HGV – MH – 18.03.11 – 31.03.11 – Dismissed  
*Financial Standing*
- T/2010/089 Dave Thompson Tours Ltd  
PSV – FB – 25.02.11 – 24.03.11 – Allowed  
*Repute*

## 2011

- T/2011/001 Bilston Skip Hire Services Ltd  
HGV – FB – 20.04.11 – 20.05.11 – Allowed, in part  
*Disqualification*
- T/2011/002 Goldman Transport Ltd  
HGV – MH – 18.03.11 – 31.03.11 – Dismissed  
*Miscellaneous* – Failure to communicate
- T/2011/003 Poletch Scaffolding Ltd  
HGV – FB – 20.04.11 – 20.05.11 – Allowed  
*Termination by non-payment*
- T/2011/004 J Browne Construction Ltd & J Browne Plant Ltd  
HGV – FB – 16.05.11 – 15.06.11 – Allowed  
*Professional competence* – to be at date of Public Inquiry/decision
- T/2011/006 Mr & Mrs Ngantu (representors) Re: Speedcrete CP Ltd  
HGV – FB – 20.04.11 – 20.05.11 – Allowed – in part – remitted  
*Miscellaneous* – refusal to review
- T/2011/008 David John Nuntt  
HGV – FB – 20.04.11 – 20.05.11 – Dismissed



*Financial standing – Miscellaneous – breach of conditions and undertakings*

- T/2011/011 Greg Taplin t/a G T Scaffolding  
HGV – FB – 16.05.11 – 15.06.11 - Dismissed  
*Financial Standing*
- T/2011/013 Satpal Singh Nijjar t/a Nijjar Skips  
HGV – FB – 16.05.11 – 15.05.11 – Allowed  
*Miscellaneous – Licence surrendered before revocation*
- T/2011/014 William Willmott t/a Willmotts  
HGV – MH – 25.05.11 – 7.06.11 – Dismissed  
*Financial standing*
- T/2011/015 Sam's Transport & Recovery Ltd  
HGV – MH- 25.05.11 – 07.06.11 – Dismissed  
*Financial standing*
- T/2011/018 CDL London Ltd & Collection Point Ltd  
HGV – AG – 09.06.11 – 27.06.11 – Dismissed  
*Financial standing – Professional competence – Transport Manager*
- T/2011/021 Lombard North Central PLC  
HGV – AG – 09.06.11 – 27.06.11 – Allowed  
*Impounding*
- T/2011/022 Andrew John Chatter t/a AJC Vehicle Delivery & Collection  
HGV – MH – 15.06.11 – 07.07.11 – Dismissed  
*Financial standing*
- T/2011/023 Taj The Grocer Ltd  
HGV – HC – 31.05.11 – 15.06.11 – Allowed – remitted  
*Miscellaneous – Fitness to hold a restricted licence*
- T/2011/024 Doonin Plant Ltd  
HGV – HC – 29.06.11 – 08.07.11 – Dismissed  
*Repute – Convictions*
- T/2011/025 Asset 2 Asset Ltd  
PSV – MH – 15.06.11 – 14.07.11 – Dismissed  
*Impounding – Miscellaneous – Fresh evidence & bias*
- T/2011/028 Heart of Wales Bus & Coach Company and Clayton Francis Jones  
PSV – MH – 10.08.11 – 1.09.11 – Allowed in part  
*Repute – PSV – financial penalty*
- T/2010/029 David Pritchard and Vehicle and Operator Services Agency  
PSV – HC – 17.08.11 – 31.08.11 – Dismissed  
*Impounding – ownership of impounded vehicles*
- T/2011/031 Barry Flowerdew t/a Auto Village Ltd  
HGV – JB – 11.07.11 – 22.07.11 – Dismissed  
*Operating Centre – new – failure to apply for variation*

- T/2011/032 Michael Welsh Ltd  
HGV – JB – 11.07.11 – 22.07.11 – Dismissed  
*Termination by non-payment*
- T/2011/033 Paul Coleman t/a Coach UK Travel  
PSV – MH – 29.07.11 – 12.08.11 – Allowed in part  
*Financial standing – Repute – Disqualification*
- T/2011/034 Utopia Traction Ltd  
HGV – MB – 21.07.11 – 25.08.11 – Dismissed  
*Repute – Miscellaneous – Convictions – Material change – conditions - undertakings*
- T/2011/035 Professional Transport Ltd  
HGV – MH – 29.07.11 – 12.08.11 – Dismissed  
*Procedure – Indications*
- T/2011/036 LWB Ltd  
PSV – MB – 21.07.11 – 25.08.11 – Dismissed  
*Repute – Financial standing – Professional Competence*
- T/2011/037 Springwood Trading Ltd  
HGV – MH – 29.07.11 – 12.08.11 – Dismissed  
*Miscellaneous – material change in circumstances – Financial Standing*
- T/2011/038 David Anderson t/a Larbert Contracts  
HGV – AG – 05.08.11 – 24.08.11 – Dismissed  
*Financial Standing*
- T/2011/039 Finesse Coaches Ltd  
PSV – HC – 17.08.11 – 31.08.11 – Allowed  
*Professional competence*
- T/2011/040 BM Transport Services Ltd  
HGV – AG – 05.08.11 – 24.08.11 – Allowed  
*Financial standing*
- T/2011/041 Tariq Mahmood t/a T.M. Travel  
PSV – MH – 07.09.11 – 23.09.11 – Dismissed  
*Maintenance*
- T/2011/042 Max Reginald West  
HGV – MH – 07.09.11 – 23.09.11 – Dismissed  
*Impounding*
- T/2011/043 D A Lewis UPVC Installations Ltd & David Andrew Lewis  
HGV – MH – 07.09.11 – 23.09.11 – Allowed  
*Miscellaneous – Whether TC could hold Public Inquiry – Drivers Hours & tachographs*
- T/2011/044 P Plant Ltd and PGC Skip Hire Ltd  
HGV – JB – 12.09.11 – 27.09.11 – Dismissed

*Repute*

- T/2011/048 Stripestar Ltd t/a Halshaw Burnley Ford  
HGV – JB – 12.09.11 – 27.09.11 – Dismissed  
*Miscellaneous* – Defective advertisement
- T/2011/50 A Tucker & sons Ltd  
HGV – MH – 31.10.11 – 16.11.11 – Dismissed  
*Operating Centre* – attaching conditions
- T/2011/051 Peter Jarman  
HGV – AG – 19.10.11 – 21.11.11 – Dismissed  
*Financial standing* – *Miscellaneous* – material change in circumstances
- T/2011/054 Andrew Piggford t/a AP Haulage  
HGV – HC – 08.12.11 – 21.12.11 – Allowed – remitted  
*Notice of issues and evidence*
- T/2011/055 Christopher David Hopcraft t/a Complete Caravan Services  
HGV – HC – 08.12.11 – 21.12.11 – Dismissed  
*Financial standing* – failure to provide sufficient evidence
- T/2011/056 Tubular Solutions UK Ltd  
HGV – HC – 08.12.11 – 21.12.11 – Dismissed  
*Financial standing*
- T/2011/058 Robert David Moore t/a RDM Travel  
PSV – HC – 30.11.11 – 8.12.11 – Dismissed  
*Repute* – *Miscellaneous* – Failure to comply with undertakings
- T/2011/060 Nolan Transport v VOSA & Secretary of State for Transport  
HGV – MB & JB – 27, 28.03.12 & 16.04.12 – 02.07.12 – Dismissed  
*International Issues, Impounding, Miscellaneous*
- T/2011/063 Edward Coakley, t/a C.R.A.  
PSV – AG – 03.02.12 – 01.03.12 – Allowed  
*Repute, Financial Standing, Professional Competence, Miscellaneous, corporate veil*
- T/2011/065 Deep Transport Ltd  
HGV – JB – 09.01.12 – 30.01.12 – Allowed, remitted  
*Repute, Miscellaneous, breach of undertakings, revocation delay in publishing decision*
- T/2011/066 David Edward Beales  
HGV – HC – 18.01.12 – 24.01.12 – Dismissed  
*Miscellaneous* – failure to respond to correspondence
- T/2011/068 Truckit 247 Ltd  
HGV – HC – 18.01.12 – 24.01.12 – Dismissed  
*Financial standing*
- T/2011/069 Melton Container Logistics Ltd & Mrs V Cassidy

HGV – AG – 24.02.12 – 15.03.12 – Allowed, remitted  
*Repute, Disqualification*

**2012**

T/2012/01 Zeeshan Malik t/a Langston's Group  
HGV – JB – 16.04.12 – 04 05 12 – Dismissed  
*Financial Standing, Professional competence*

T/2012/03 MGU Haulage & Transport Ltd  
HGV – JB – 16.04.12 – 04.05.12 – Dismissed  
*Miscellaneous, failure to advertise application in time*

T/2012/05 A N D Haulage Ltd  
HGV – MB – 30.04.12 – 10.05.12 – Allowed, remitted  
*Repute, Disqualification*

T/2012/06 Goodman Hitchens PLC  
HGV – MH – 31.05.12 – 18.06.12 – Allowed in part re disqualification  
*Miscellaneous, reliance on correspondence address*

T/2012/08 Brian Richards, t/a B. Richards  
HGV – MB – 30/04/12 – 10/05/12 – Dismissed  
*Termination for non-payment*

T/2012/10 Edward Stuart Nelson t/a ES Nelson Transport  
HGV – MH – 31.05.12 – 18.06.12 – Dismissed  
*Financial Standing.*

T/2012/12 Aluminium Shapes Ltd  
HGV – MH – 31.05.12 – 18.06.12 – Allowed, remitted  
*Miscellaneous, appearance of unfairness*

T/2012/13 Russet Red Ltd  
HGV – MH – 13.07.12 – 14.08 12 – Dismissed  
*Miscellaneous, sustained non-compliance, Disqualification*

T/2012/14 Atec Scaffolding (Preston) Ltd  
HGV – MB – 19.06.12 – 28.06.12 – Allowed  
*Miscellaneous, proceeding in absence of Applicant*

T/2012/15 First Manchester Ltd  
PSV – MB – 19.06.12 – 26.07.12 – Allowed in part  
*PSV, penalty for failure to comply with registered timetable*

T/2012/16 JSO Logistics Ltd  
HGV – MH – 13.07.12 – 14.08 12 – Dismissed  
*Financial Standing*

T/2012/17 NCF (Leicester) Ltd  
HGV – MB – 19.06.26 – 26.07.12 – Dismissed  
*Repute, Financial Standing, Miscellaneous, Transport Manager*

- T/2012/18 & 19 Steven Barry Smith & Helen Graham  
HGV – MH – 04.12.12 – 14.12.12 – Dismissed & remitted  
*Impounding, failure to comply with time limits*
- T/2012/20 A+Logistics Ltd  
HGV – MH – 13.07.12 – 27.07.12 – Dismissed  
*Repute, Miscellaneous, unauthorised operating centre, maintenance*
- T/2012/21 W B M Scaffolding Ltd  
HGV – MB – 19.06.12 – 16.07.12 – Dismissed  
*Financial Standing, Miscellaneous, failure to respond*
- T/2012/22 Savpreet Singh Aulakh (transport manager)  
HGV – AG – 19.07.12 – 16.08.12 – Allowed  
*Disqualification, transport manager*
- T/2012/23 JA & VC Fryer Farms  
HGV – MB – 24.08.12 – 10.09.12 – Dismissed  
*Miscellaneous, no right to appeal formal warning*
- T/2012/24 DJ Brotherton t/a John Brotherton  
HGV – AG – 19.07.12 – 16.07.12 – Dismissed  
*Miscellaneous, fitness to hold a licence, failure to disclose convictions, Disqualification*
- T/2012/25 First Class Freight Ltd  
HGV – MB – 24.08.12 – 10.09.12 – Dismissed  
*Repute, Disqualification*
- T/2012/26 Ernest Walton t/a E Walton Transport  
HGV – MB – 24.08.12 – 10.09.12 – Dismissed  
*Financial Standing*
- T/2012/27 David I Booker  
PSV – AG – 03.09.12 – 26.09.12 – Dismissed  
*Repute of transport manager*
- T/2012/28 Shamrock (GB) Ltd  
HGV – AG – 03.09.12 – 02.10.12 – Allowed & remitted  
*Repute, Decision, adequacy of reasons, Notice of Issues and Evidence*
- T/2012/29 M E Kinsley t/a Diamond Fitzgerald Travel  
PSV – AG – 03.09.12 – 02.10.12 – Dismissed  
*Notice of Issues and Evidence*
- T/2012/30 M G M Haulage & Recycling Ltd  
HGV – AG – 03.09.12 – 02.10.12 – Dismissed  
*Operating centre, adequacy of advertisement*
- T/2012/32 T J R Scaffolding Ltd  
HGV – MH – 26.09.12 – 19.10.12 – Dismissed  
*Financial Standing, Maintenance*

- T/2012/33 RB Hire Ltd  
HGV – MH – 17.10.12 – 07.11.12 – Dismissed  
*Impounding*
- T/2012/34 Martin Joseph Formby t/a G & G Transport  
HGV – MB – 05.10.12 – 17.10.12 – Dismissed  
*Repute*
- T/2012/35 Andrew Hardy t/a Andrew Hardy Commercials  
HGV – MB – 05.10.12 – 31.10.12 – Allowed & remitted  
*Miscellaneous, correspondence address*
- T/2012/36 Patrick O’Keefe t/a O’Keefe Building  
HGV –MH – 26.09.12 – 19.10.12 – Allowed & remitted  
*Human Rights, fairness of Public Inquiry, Decision, failure to make findings on key issue*
- T/2012/37 F & M Refrigerated Transport Ltd  
HGV – MB – 05.10.12 – 02.11.12 – Allowed  
*Impounding, International Issues*
- T/2012/39 P L Limos Ltd  
PSV – MB – 05.10.12 – 02.11.12 – Dismissed  
*Impounding, Procedure, fresh evidence*
- T/2012/42 City Carriages (London) Ltd  
HGV – MH – 17.10.12 – 07.11.12 – Dismissed  
*Financial Standing, Drivers Hours & Tachographs, Procedure, evidence*
- T/2012/44 Highland Car Crushers Ltd  
HGV – MB – 05.12.12 – 15.01.13 – Dismissed  
*Disqualification*
- T/2012/45 Goods 2 Go Ltd  
HGV – MH – 17.10.12 – 07.11.12 – Allowed & remitted  
*Notice of Issues and Evidence, two letters with inconsistent deadlines*
- T/2012/46 Pradeep Kumar Sharma t/a RS Fruitstore  
HGV – MB – 09.11.12 – 23.11.12 – Allowed & remitted  
*Miscellaneous, restricted licence, financial resources*
- T/2012/47 Susan Tattershall  
HGV – MB – 09.11.12 – Allowed & remitted  
*Procedure, decision made without a hearing*
- T/2012/50 Charlie Roberts Ltd t/a Man Euro  
HGV – MB – 09.11.12 – 23.11.12  
*Repute, Professional Competence, Financial Standing*
- T/2012/53 Clayton Cars Ltd  
PSV – MB – 09.11.12 – 19.12.12 – Allowed & remitted  
*Impounding, PSV, when Stretch Limo is a PSV*

- T/2012/54 Ron McCambridge t/a Functions 'R' Us  
HGV – MB – 05.12.12 – 07.01.13 – Dismissed  
*Miscellaneous, Restricted Licence – Financial Resources*
- T/2012/55 Speedcrete CP Ltd  
HGV – MH – 19.11.12 – 04.12.12 – Dismissed  
*Operating Centre, suitability*
- T/2012/56 & 57 Deep Transport Ltd & Midland Transport Ltd  
HGV – JB – 08.01.13 – 22.01.13 – Dismissed  
*Repute, Miscellaneous, breach of undertakings, phoenix company, Disqualification*
- T/2012/58 Alan Knight Transport B.V. & Alan Michael Knight  
HGV – MH – 19.11.12 – 04.12.12 – Struck Out  
*Procedure, no jurisdiction*
- T/2012/59 Kevin Smith t/a Midland Marble Ltd  
HGV – MH – 19.11.12 – 04.12.12 – Dismissed  
*Operating Centre, adequacy of advertisement*
- T/2012/60 Tyneside Travel (2007) Ltd  
PSV – JB – 08.01.13 – 25.02.13 – Dismissed  
*Repute, Miscellaneous, unlawful use of discs, production of documents, Disqualification*
- T/2012/65 Claremont Marquees Ltd  
HGV – JB – 11.12.12 – 08.01.13 – Dismissed  
*Termination by non-payment*
- T/2012/66 Harkin Group Ltd  
HGV – JB – 11.12.12 – 08.01.13 – Allowed & remitted  
*Miscellaneous, unlawful operation, Procedure, fairness of hearing*
- T/2012/68 Peter Nicholas Priedel t/a Sandwich Statics  
HGV – MB – 18.01.13 – 05.02.13 – Allowed & remitted  
*Financial Standing, Repute, Professional Competence*
- T/2012/69 Terry William Friar t/a TW Friar Transport  
HGV – MB – 18.01.13 – 04.02.13 – Dismissed  
*Miscellaneous, material change in circumstances, failure to respond to correspondence*
- T/2012/70 Bespoke Construction (South East) Ltd  
HGV – MB – 15.02.13 – 04.03.13 – Dismissed  
*Miscellaneous, breach of conditions, material change in circumstances, failure to respond to correspondence*
- T/2012/71 Silvertree Transport Ltd  
HGV – MB – 15.02.13 – 04.03.13 – Dismissed  
*Repute, fronting, Professional Competence, Transport Manager, disqualification and rehabilitation requirement*

- T/2012/72     Walton Coach Hire Ltd  
                  PSV – AG – 15.03.13 – 15.04.13 – Allowed  
*Maintenance, reduction in size of fleet*
- T/2012/73     Mohindarpal Singh  
                  HGV – AG – 15.03.13 – 15.04.13 – Dismissed  
*Miscellaneous, material change, failure to respond to correspondence*
- T/2012/77     Edwards Transport (Shropshire) Ltd  
                  HGV – MH – 27.03.13 – 29.04.13 – Dismissed  
*Operating Centre, environmental*
- 2013**
- T/2013/01     Sandwell Travel Ltd  
                  PSV – MH – 27.03.13 – 23.04.13 – Allowed, penalty substituted  
*PSV, penalty for failure to comply with timetable substituted*
- T/2013/02     Leo's Import Export Ltd  
                  HGV – MH – 27.03.13 – 29.04.13 – Dismissed  
*Revocation, proportionality*
- T/2013/03     Bradley Fold Ltd & Peter Wright  
                  PSV – JB – 04.02.13 – Struck Out  
*Tribunal lacked jurisdiction to hear the appeal*
- T/2013/05     S B Recycling Ltd  
                  HGV – AG – 15.03.13 – 15.04.13 – Dismissed  
*Financial Standing, Procedure, circumstances arising after Public Inquiry*
- T/2013/06 &     Munro's of Jedburgh Ltd  
T/2013/11     Michael Jenkins & Shelagh Jenkins  
                  PSV – MH – 03.04.13 – 18.04.13 – Allowed in part otherwise  
                  dismissed  
*Repute, Disqualification*
- T/2013/07     Redsky Wholesalers Ltd  
                  HGV – MH – 27.03.13 – 23.04.13 – Dismissed  
*Miscellaneous, fitness to hold a licence*
- T/2013/08     Vision Travel International Ltd  
                  PSV – AG – 04.07.13 – 23.08.13 – Allowed, different decision  
                  substituted  
*Repute, corporate veil; Adequacy of reasoning, revocation disproportionate*
- T/2013/09     Sarah Boyes t/a Boyes Transport  
                  HGV – MH – 21.05.13 – 17.06.13 – Dismissed  
*Repute, adequacy of reasons; Tribunal should not lightly overturn findings of  
fact*



- T/2013/12 Sarbjit Singh Raju & VIP Contracts Ltd  
PSV – MH – 21.05.13 – 18.06.13 – Allowed  
*Repute; Professional Competence*
- T/2013/13 Taz Distribution Ltd. & Mehfuz Ahmed  
HGV – JB – 09.04.13 – 29.04.13 – Dismissed  
*Repute, Disqualification, Miscellaneous, exceeding*
- T/2013/15 Commercial Tradings Ltd  
HGV – MB – 04.06.13 – 02.07.13 – Dismissed  
*Impounding*
- T/2013/17 Francis Edward Walter Cantle  
HGV – MB – 04.06.13 – 02.07.13 – Dismissed  
*Termination for non-payment*
- T/2013/18 CVS (East Midlands) Ltd  
HGV – MH – 21.05.13 – 17.06.13 – Dismissed  
*Financial Standing*
- T/2013/19 Susan Tattersall t/a TMS  
HGV – MB – 26.07.13 – 20.08.13 – Dismissed  
*Good Repute*
- T/2013/20 N S C Design Ltd  
PSV – AG – 16.07.13 – 05.08.13 – Dismissed  
*Financial Standing*
- T/2013/21 Societe Generale Equipment Finance Ltd v VOSA  
HGV – MB – 26.07.13 – 03.09.13 – Allowed, remitted  
*Impounding*
- T/2013/22 David James Roots t/a Orange Coach Travel  
PSV – MB – 26.07.13 – 20.08.13 – Dismissed  
*Repute; Transport Manager; Disqualification*
- T/2013/23 Ian Charles Hopkins t/a Hopkins Scaffolding  
HGV – MB – 26.07.13 – 07.08.13 – Dismissed  
*Restricted Licence – Financial Resources*
- T/2013/26 Vince Larkin Ltd  
HGV- JB – 29.07.13 – 12.08.13 - Dismissed  
*Miscellaneous, test for revocation of restricted licence*
- T/2103/27 Southern Drives Ltd  
HGV – JB – 29.07.13 – 07.08.13 – Allowed, new decision substituted  
*Miscellaneous, restricted licence, revocation disproportionate*
- T/2013/28 JB Logistics Ltd  
HGV – JB – 29.07.13 – 05.08.13 – Dismissed  
*Impounding*
- T/2013/29 Stuart McAuliffe

- HGV – JB – 29.08.13 – 12.08.13 – Allowed, remitted  
*Professional Competence; Transport Manager, repute*
- T/2013/31      Tariq Mehmood Akhtar  
                  HGV – MB – 26.07.13 – 07.08.13 – Dismissed  
*Miscellaneous, restricted licence, revocation*
- T/2013/32      Ann Gillian Rowbotham t/a Ann's Executive Coaches  
                  PSV – MH – 06.08.13 – 28.08.13 – Allowed in part  
*Repute; Financial Standing*
- T/2013/33      William Baker  
                  HGV – MH – 06.08.13 – 28.08.13 – Dismissed  
*Termination for non-payment*
- T/2013/34      Beautridge Haulage Ltd  
                  HGV – MH – 06.08.13 – 28.08.13 – Dismissed  
*Financial Standing*
- T/2013/35      Paul Grafton  
                  HGV – JB – 20.08.13 – 03.09.13 – Allowed, remitted  
*Transport Manager, repute, disqualification*
- T/2013/36      Ian John Smith  
                  HGV – JB – 20.08.13 – 04.09.13 – Dismissed  
*Repute; Disqualification*
- T/2013/37      UK London Skip Hire Barking Ltd  
                  HGV – MH – 06.08.13 – 13.08.13 – Allowed, remitted  
*Impounding*
- T/2013/38      Hobart Court property Management Ltd v Kent  
                  HGV – MB – 08.10.13 – 26.11.13 – Allowed, new decision substituted  
*Procedure, new material obtained after Public Inquiry*
- T/2013/39      Ribble Valley coaches & John Pilkington  
                  PSV – JB – 20.08.13 – 02.09.13 – Allowed, in part  
*Procedure; Adequacy of reasons*
- T/2013/40      Southwaterstreet Ltd & Thomas McKinney  
                  HGV – JB – 22.10.13 – 25.11.13 – Dismissed  
*Disqualification, test for cancellation; Repute*
- T/2013/41      Matthew Sheard & Sons Ltd  
                  HGV – JB – 17.09.13 – 25.09/13 – Dismissed  
*Miscellaneous, material change in circumstances*
- T/2013/42      Project Movements Ltd (John Norcott)  
                  HGV – JB – 17.09.13 – 26.09.13 - Allowed  
*Miscellaneous, operator ceased to trade; Disqualification*
- T/2013/46      Shearer Transport Ltd & James Shearer (Director)  
                  HGV – MH – 27.09.13 – 30.09.13 – Dismissed

*Disqualification*

- T/2013/47 Dundee Plant Company Ltd  
HGV – MH – 27.09.13 – 23.10.13 – Dismissed  
*Suspension, correct approach*
- T/2013/48 Jane Townend  
HGV – MB – 08.10.13 – 28.10.13 – Dismissed  
*Financial Standing*
- T/2013/49 Stuart Mark Vincent t/a Call a Cab  
PSV – JB – 22.10.13 – 07.11.13 – Allowed, remitted  
*Miscellaneous, failure to act on request for Public Inquiry*
- T/2013/50 Tariq Mehmood Akhtar v VOSA  
HGV – MB – 08.10.13 – 28.10.13 – Dismissed  
*Impounding*
- T/2013/51 NP Clare Transport Ltd v VOSA  
HGV – MB – 08.10.13 – 21.11.13 – Dismissed  
*Impounding*
- NT/2013/52 Fergal Hughes and  
NT/2013/53 Perry McKee Homes Ltd v Department of the Environment in NI  
HGV – MB – 29.11.13 – 05.12.13 – Dismissed  
*Termination for non-payment*
- T/2013/56 Bradley Fold Travel Ltd & Peter Wright v VOSA  
PSV – JB – 11.12.13 – 17.02.14 – Dismissed  
*Impounding, PSV*
- T/2013/57 T Henderson Transport Ltd  
HGV – MB – 07.11.13 – 23.12.13 – Dismissed  
*Repute; Professional Competence*
- T/2013/58 Patrick Ward t/a Allshires Landscapes and  
T/2013/75 Overbrook Recovery Services Ltd  
HGV – MB – 17.01.14 – 31.01.14 – Allowed  
*Termination for non-payment*
- T/2013/59 Sally Fuller Ltd t/a Go Couriers  
HGV – MH – 15.11.13 – 06.12.13 – Dismissed  
*Financial Standing*
- T/2013/61 Alan Michael Knight v VOSA  
HGV – MH – 15.11.13 – 06.12.13 - Dismissed  
*Impounding*
- T/2013/62 Sukhvir Kaur t/a Major Cars  
PSV – MH – 15.11.13 – 27.11.13 – Allowed, remitted  
*PSV; Procedure, interpreters*
- T/2013/63 Balwant Singh Uppal t/a Professional Chauffeuring Services &

- PCS Limos Ltd  
PSV – MB – 17.01.14 – 03. 02.14 – Allowed
- T/2013/64 Michael Steven Reed  
HGV – 15.11.13 – 26.11.13 – Dismissed  
*Termination for Non-Payment; Procedure, no power to grant a stay*
- T/2013/66 VST Building & Maintenance Ltd  
HGV – MB – 17.01.14 – 27.02.14 – Allowed re disqualification
- T/2013/68 Leslie Graham Bettley & Lynne Bettley  
HGV – MH – 06.03.14 – 18.03.14  
*Miscellaneous, falsification of tachographs; Disqualification*
- T/2013/69 Irene Clark  
HGV – MH – 22.01.14 – 13.02.14 – Dismissed  
*Termination for Non-Payment*
- T/2013/71 Paul Baird v VOSA  
HGV – MH – 22.01.14 – 13.02.14 – Dismissed  
*Impounding*
- T/2013/72 John Roberts  
HGV – MH – 21.02.14 – 13.03.14 – Dismissed  
*Miscellaneous, material change, failure to respond to correspondence.*
- T/2013/73 Ghulam Qadir Khan  
HGV – MB – 17.01.14 – 30.01.14 – Allowed  
*Procedure, change of address not made by operator*
- T/2013/74 Highway International Ltd  
HGV – MB – 17.01.14 – 30.01.14 – Allowed  
*Miscellaneous, failure to respond to correspondence/giving notice*
- T/2013/76 City Sprinter Ltd  
PSV – MH – 22.01.14 – 13.02.14 – Allowed  
*Financial Standing; Procedure, time limits*
- T/2013/77 Hughes Bros Construction Ltd  
PSV – MH – 21.2.14 – 13.3.14 – Dismissed  
*Miscellaneous, non-co-operation with VOSA*
- T/2013/78 James Kind t/a James King Coaches &  
T/2013/79 ABC Travel (Castle Douglas) Ltd  
PSV – MH – 22.01.14 – 13.02.14 – Allowed, remitted  
*Procedure, natural justice/reasonable expectation*
- T/2013/80 Graham William Smith t/a Smiths Coaches  
PSV – MH – 21.02.14 – 13.03.14 – Allowed, remitted  
*Procedure, duty to provide/adequacy of reasons*
- T/2013/81 Brian Richard Crabb T/a County Taxis  
PSV – MH – 21.02.14 – 21.02.14 – 13.03.14 – Dismissed

*Revocation*

- NT/2013/82 Arnold Transport & Sons Ltd v DOENI  
 HGV – MB – 20.03.14 – 07.03.14 – Dismissed  
*Repute, Financial Standing, Professional Competence*
- T/2013/83 Ahmad Yusuf Kasam t/a Ahmad Kasam & Sons  
 PSV – MH – 06.03.14 – 18.03.14 – Dismissed  
*Procedure, request for Public Inquiry*
- T/2013/84 Leslie James Price  
 HGV – MH – 21.02.14 – 13.03.14 – Dismissed  
*Termination by Non-Payment*
- T/2013/85 Karl Dyson & Brian Dyson  
 HGV – JB – 25.03.14 – 31.03.14 – Dismissed  
*Restricted Licence, environmental representations*
- T/2013/86 Redsky Wholesalers Ltd  
 HGV – JB – 24.03.14 – 02.04.14 – Allowed, restricted licence granted  
*Restricted Licence, Fitness to hold a licence*

**2014**

- NT/2014/01 Michael McKenna Withdrawn
- NT/2014/02 Mrs Janet Lyons t/a Lyons Haulage v DOENI  
 HGV – MB – 20.03.14 – 23.04.14 – Dismissed  
*Repute; Financial Standing; Professional Competence*
- T/2014/03 Sarah Boyes v DVSA  
 HGV – MH – 16.04.14 – 28.04.14 - Dismissed  
*Impounding*
- T/2014/04 Ignition Credit Ltd & Thomas Richard Benney v DVSA  
 HGV – MH – 16.04.14 – 28.04.14 – Mixed  
*Impounding*
- T/2014/06 Paul Ellis t/a Albert Haigh & Sons  
 HGV – JB – 25.03.14 – 31.03.14 – Dismissed  
*Restricted licence, material change*
- T/2014/08 Duncan McKee & Mary McKee  
 HGV – MH – 21.05.14 – 04.06.14 – Dismissed  
*Financial Standing, period of grace*
- T/2014/09 Hunterstrong Engineering Ltd t/a Northover Heavy Logistics & Craig  
 Northover and Gael Northover  
 HGV – MB – 10.06.14 – 18.08.14 – Mixed  
*Repute, Financial Standing, Disqualification, Transport Manager*

- T/2014/10 Michael Charles Taylor  
HGV – MB – 08.04.14 – 29.04.14 – Allowed, remitted  
*Transport Manager, repute, professional competence, disqualification*
- T/2014/11 David Keith Bradley, &  
T/2014/12 Julie Bradley  
HGV – MB – 08.04.14 – 03.06.14 – Dismissed  
*Disqualification, Directors; Transport Manager.*
- T/2014/13 MM Telford Ltd & RMT Transport Ltd  
HGV – MH – 05.06.14 – 16.06.14 – Allowed  
*Repute; Professional Competence*
- T/2014/14 Omar Alvarez-Gutierrez Withdrawn
- T/2014/15 Martin Gordon Self t/a MR TAS  
HGV – JB – 13.05.14 – 21.05.14 – Dismissed  
*Professional Competence*
- T/2014/16 Jason Ltd t/a Rob Jones Tractor Hire Withdrawn
- NT/2014/17 Terence Stinson t/s Stinson Transport v DOENI  
HGV – MH – 10.07.14 – 21-07-14 – Allowed, remitted  
*Refusal of application without consideration of merits*
- T/2014/18 Guiseppe & Giosue Bille t/a Contrada Farms UK  
HGV – MH – 05.06.14 – 20.06.14 – Dismissed  
*Termination for non-payment*
- NT/2014/19 OC International Transport Ltd v DOENI  
HGV – MH – 10.07.14 – 25.07.14 – Allowed, remitted  
*Natural Justice, disclosure, composition of Tribunal*
- T/2014/20 Seamus Joseph Patterson t/a Patterson Plant  
HGV – MB – 23.07.14 – 26.07.14 – Dismissed  
*Termination for non-payment.*
- NT/2014/21 SOE haulage Ltd v DOENI  
HGV – MH – 10.07.14 – 25.07.14 Allowed, remitted  
*Natural Justice, disclosure, composition of Tribunal*
- T/2014/22 Robert Karwowski t/a Robert Transport  
HGV – MB – 23.07.14 – 27.08.14 – Dismissed  
*Financial standing; Professional Competence; Discretionary issues*
- T/2014/23 TST Transport Ltd Withdrawn
- T/2014/24 LA & Z Leonida t/a E T S  
HGV – MB – 23.07.14 – 16.09.14 Dismissed  
*Suspension*

- T/2014/25 H. Sivyer (Transport ) Ltd (Operator) &  
T/2014/26 Simon Sivyer (Transport Manager)  
HGVS – MH – 03.09.14 – 10.10.14 – Mixed  
*Discretionary issues, drivers' hours and tachographs; Curtailment;  
Disqualification, Transport Manager, Repute & Professional Competence*
- T/2014/27 AC Travel Ltd Withdrawn
- NT/2014/29 John Alexander Clark t/a J A Clark Livestock Haulage v DOENI  
HGVS – MH – 10.07.14 – 21.07.14 – Allowed, remitted  
*Refusal of application without consideration of merits*
- T/2014/30 John Grey t/a Citytax Withdrawn
- T/2014/31 James Fleming  
PSV – MB – 13.08.14 – 08.10.14 – Dismissed  
*Conditions for holding Restricted PSV licence*
- T/2014/32 Adrian Boot t/a ABS  
HGVS – MB – 13.08.14 – 08.10.14 – Dismissed  
*Restricted Licence*
- T/2014/33 Bulk Waste Management Ltd  
HGVS – MB – 13.08.14 – 08-10.14 – Dismissed  
*Financial Standing*
- T/2014/35 Yard 3 Ltd t/a RDA Vehicle Dismantlers Withdrawn
- T/2014/36 Decron Scaffolding Ltd Withdrawn
- T/2014/37 Adam Nienal Towski (Transport Manager)  
T/2014/38 Fifth Zone Ltd (Operator)  
HGVS – JB – 19.08.14 – 01.09.14 – Dismissed  
*Repute; Professional Competence; Discretionary Issues; Disqualification*
- T/2014/39 VIP Contracts Ltd  
PSV – MH – 03.09.14 – 1-.09.14 – Mixed  
*Suspension, power of TC to cancel or vary under s. 17(5)(b) of the 1981 Act*
- T/2014/40 CG Cargo Ltd (Operator)  
T/2014/41 Sukwinder Singh Sandhu (Director)  
HGVS – MH – 03.09.14 – 30.09.14 – Dismissed  
*Lack of Transport Manager; deception of Traffic Commissioner;  
disqualification*
- T/2014/42 Brian Robert Cutmore  
PSV – MH – 11.09.14 – 13.10.14 – Dismissed  
*Transport Manager, repute; Disqualification, indefinite*

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- T/2014/43 Lee Mayfield t/a LDF Recycling  
HGV – JB – 16.09.14 – 18.09.14 – Mixed  
*Establishment, operating centre, unauthorised parking. Restricted licence, fitness*
- T/2014/44 Stephen James Beattie t/a Sowerby Minibus Travel  
PSV – MB – 23.07.14- 26.08.14 – Dismissed  
*Repute, failure to fulfil undertaking*
- T/2014/45 Mohammed Khalid & Naveela Khalid t/a K & N Vegetables: Withdrawn
- T/2014/46 Marshland Logistices Ltd & John McGuinness  
HGV – JB – 19.08.14 – 27.08.14 – Dismissed  
*Repute, fronting; Disqualification*
- T/2014/47 ABC Travel (Castle Douglas) Ltd Withdrawn
- T/2014/48 James Kind t/a James King Coaches Withdrawn
- T/2014/49 Wendy Dins Kerr t/a Bar Logistics Withdrawn
- T/2014/50 Andrew Harris t/a Harris of Leicester - Mixed  
PSV- MB – 26.09.14 – 27.10.14 -  
*Mandatory loss of good repute; suspended sentence is a sentence of imprisonment; ability of Traffic Commissioner to consider if good repute restored when disqualification has expired.*
- T/2014/51 Michael Thomas Aylesbury, t/a MT Aylesbury - Allowed  
HGV – MB – 26.09.14 – 09.10.14  
*Termination for non payment; approach to assessment of 'exceptional circumstances'*
- T/2014/52 John Pilkington  
PSV – MH – 08.10.14 – 04.11.14 – Allowed – remitted  
*Application to cancel disqualification, criteria to be applied*
- T/2014/53 Carmel Coaches Ltd & Anthony Grove Hazel & Michael James  
T/2014/54 Hazell  
PSV – JB – 16.09.14 – 17.10.14 - Dismissed  
*Repute; breach of undertakings; Prohibitions; Procedure, balancing exercise; Tribunal's powers*
- T/2014/55 Michael Terrance Barrett t/a Barrett Transport Withdrawn
- T/2014/56 Linda Maureen Barrett & Michael Terrance Barrett  
t/a M Barrett Transport Withdrawn
- T/2014/57 Tina Louise Domeney Transport Manager Withdrawn
- T/2104/58 Angus Smales t/a Angus Smales Eventing  
HGV – JB – 16.09.14 – 22.09.14- Dismissed



*Professional competence, inability of transport manager to exercise continuous and effective management*

- T/2104/59 Randolph Transport Ltd & Catherine Tottenham  
HGV – MH – 11.09.14 – 13.10.14 – Dismissed  
*Revocation, Repute; Disqualification; Transport Manager*
- T/2014/60 Midland Trucking Services Ltd & Darren John Harris  
HGV – JB – 09.12.14 – 02.01.15 – Mixed  
*Discretionary issues, undertakings; Revocation; Transport Manager, non-compliance with duties, oversight; Disqualification*
- T/2014/61 Barry Trevor Welch t/a North Lincolnshire Transport Services  
HGV – JB – 14.10.14 – 20.10.14 – Dismissed  
*Repute; Discretionary issues, breach conditions, failure to respond*
- T/2014/62 Dakin Transport Ltd Withdrawn
- T/2014/63 Pilkington Asbestos Removal Services Ltd  
Derek Pilkington & Barbara Pilkington  
HGV – MH – 08.10.14 – 04.11.14 – Allowed & remitted  
*Public Inquiry, TC misled*
- T/2014/64 Alan Michael Knight  
HGV – KM – 24.10.14 – 18.12.14 - Dismissed  
*Repute; Financial standing; Professional competence*
- T/2014/65 Trevor Kevin Dibnah t/a Weyside Travel Withdrawn
- T/2014/66 Bridget Burden & Partners  
HGV – KM – 18.11.14 – 19.01.15 – Dismissed  
*Refusal of application where one partner disqualified*
- T/2014/67 Karen Elizabeth Jones t/a J & K Transport  
HGV – KM – 18.11.14 – 19.01.15 – Allowed  
*Establishment, operating centre, environmental conditions*
- T/2014/68 Terence Cleary t/a T & M Associates Withdrawn
- T/2014/69 David Anthony Clewett  
HGV – KM – 18.11.14 – 19.01.15 – Dismissed  
*Impounding, ownership, lack of knowledge*
- T/2014/70 McMullan International Logistics Ltd Withdrawn
- T/2014/71 W. Martin Oliver Partnership v DVSA  
HGV – MH – 27.02.15 – 05.03.15 – Allowed remitted  
*Impounding hearing, material irregularity, no opportunity to deal with new material*
- T/2014/72 Ian Russell Nicholas t/a Wigan Container Services v Secretary of State for Transport



*Repute; Financial standing; Discretionary issues, maintenance; Public Inquiry, failure to attend, refusal to adjourn*

T/2014/86 Cole Crispin Ltd  
 HGV – JB – 24.03.15 – 30.03.15 – Dismissed  
*Restricted Licence, failure to comply with requirements.*

## 2015

**Unless the decision merits an entry in Part I of the Digest only the number, name and result of appeals received from 2015 onwards will be provided.**

T/2015/01	UR Logistics Ltd & Rajwant Kaur Bath	Withdrawn
T/2015/02	Shoretime Ltd, (later Leigh Rushworth Ltd)	Dismissed
T/2015/03	Worksop Waste Ltd	Withdrawn
T/2015/04	Gwenlais Yvonne Thomas	Dismissed
NT/2015/05	Raymond Pedlow t/a Pedlow Engineering HGV – KM - 02.07.15 – 15.09.15 – Dismissed <i>Application, advertisement out of time, no discretion, NI provisions identical to GB provisions.</i>	
T/2015/06	Imran Khan t/a Khan's	Withdrawn
T/2015/07	Stuart McAuliffe HGV – JB – 04.08.15 – 24.08.15 – Dismissed <i>Bias, struck out for failure to comply with direction; Hearing, nature of re-hearing.</i>	
T/2015/08	Diamond Bus Ltd PSV – MH – 18.06.15 – 29.06.15 - Allowed in part <i>PSV, penalty, approach</i>	
T/2015/09	Richard & Sylvia Jones t/a Acorn Skips HGV – MB – 08.04.15 – 29.05.15 – Dismissed <i>Repute, mandatory loss; Discretionary Issues, change of entity; Miscellaneous, definition of road.</i>	
T/2015/10	Cornwall Busways Ltd PSV – MB – 08.04.15 – 08.06 15 – Dismissed <i>Tribunal Procedure, withdrawal of appeal; Surrender of operator's licence; PSVs, penalty.</i>	
T/2015/11	Travel Express Ltd (operator) & Kishan Singh Chumber (transport manager)	Dismissed
T/2015/12	Optimus Access Ltd	Dismissed
T/2015/13	Metal Reclamation Investments LLP	Withdrawn

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NT/2015/15	Peter Martin Haughey HGV – KM – 02.07.15 – 28.01.16 – Allowed, Tribunal substituted own Decision <i>Restricted licence, finance</i>	
T/2015/16	Heavy haulage (Scotland) Ltd HGV – KM – 01.05.15 – 06.07.15 – Dismissed <i>Repute, matters to be taken into account include relevant familial relationships</i>	
T/2015/17	Aijaz Ahmed	Withdrawn
T/2015/18	Meter Sport Ltd	Dismissed
T/2105/19	James Kilpatrick t/s J Kilpatrick Coach Hire PSV – MB – 16.07.15 – 18.08.15 – Dismissed <i>Repute; Financial standing; Restricted licence, main occupation</i>	
T/2015/20	M C T Group Travel Ltd	Dismissed
T/2015/21	J O'Doherty Haulage Ltd	Dismissed
T/2015/22	Euomar Ltd	Dismissed
T/2015/23	Balwant Singh Uppal t/a Chauffeuring Services & PCS Limos Ltd	Dismissed
T/2015/24	Mohammed Arif	Dismissed
T/2015/25	William John Parks	Withdrawn
NT/1015/26	Connolly Transport Ltd	Dismissed
T/2015/27	D. Telfer t/a D T Commercials	Allowed
T/2015/29	Daniel Stephen Price t/a Danny Price Haulage	Dismissed
T/2015/30	Julie Smith	Dismissed
T/2015/31	RBS Groundworks Ltd, Rodney Brice-Smith & Kim Brice-Smith	Mixed
T/2015/32	Mark Lyons t/a Lyons Haulage HGV – KM – 10.11.15 – 15.03.16 – Dismissed <i>Public Inquiry, fairness of proceedings</i>	
T/2015/33	Dangerfields Executive Travel Ltd & Judith Ann Young	Dismissed
T/2015/34	Atlantic Scaffolding Ltd	Withdrawn
T/2015/36	W. Martin Oliver Partnership	Refused
T/2015/37	Mohammed Khan t/a A1 Cars & Minibuses	Dismissed

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T/2015/38	Skip it Skips Ltd	Allowed & remitted
T/2015/39	First Line International Ltd & W J Lambie HG-AG-20.11.15-13.01.16 EM-25.06.16-20.06.16 <i>Good Repute, Operator and Transport Manager, approach to proportional</i>	Allowed but later Set Aside Dismissed
T/2015/40	Tacsi Gwynedd Ltd PSV – EM – 22.09.15 – 26.11.15  <i>Transport Manager, genuine link &amp; period of grace; Discretionary issues, failure to produce records, adverse findings</i>	Allowed decision substituted
T/2015/41	CP Transportation Services Ltd (Operator) & Adam Searle (Transport Manager)	Withdrawn
T/2015/42	Muhammad Asim Khattack	Withdrawn
T/2015/44 T/2015/45	Oakwood Travel Services & Philip Higgs v SoS Frank Steel v SoS for Transport	Remitted by consent
T/2015/47	Tri counties Biogas Ltd	Withdrawn
T/2015/46	Raymond Borkowski	Allowed - Remitted
T/2015/48	Quinn Ltd	Struck Out
T/2015/49	Matthew Reynolds v SoS for Transport HG-AG – JB – 01.03.15 – 31.03.15 – <i>Transport Manager, repute and professional competence, disqualification</i>	Allowed-decision substituted
T/2015/50	Ibrar Anif t/a Local Minibus Travel	Dismissed
T/2015/51	Wayne Aaron Ruff	Withdrawn
T/2015/52	Travel Express Ltd	Withdrawn
T/2015/53 T/2015/75 T/2015/76	Liam Moloney Plant Hire Ltd Liam Moloney Thomas Ryan & Euro Skips Ltd	Dismissed Allowed Dismissed
T/2015/54	Richard John Cox t/a RJ Cox & Sons HG-AG – JB – 26.01.16 – 02.02.16 – <i>Tribunal procedure &amp; practice, evidence</i>	Allowed-Remitted
T/2015/55	PWT Contracts Ltd HG-AG – M Hemingway – 25.02.16 – 17.03.16 – <i>Tribunal procedure &amp; practice, other</i>	Dismissed
T/2015/56	MAP Developments (Scotland) Ltd	Dismissed
T/2015/57	A. Adams	Dismissed

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T/2015/59	Graham Pender PSV – EM - 26.05.16-11.07.16 - <i>Practice, hearing in absence of Appellant</i>	Dismissed
T/2015/60	Ian Moore t/a Moore I Ltd	Withdrawn
T/2015/62	AS Adams Ltd	Dismissed
T/2015/63	Mr M & Mrs V Smith	Allowed
T/2015/64	Turrif Transport Consultants Ltd & William Walker	Dismissed
T/2015/66	Amalgamated Marketing Services Ltd	Struck Out
T/2015/68	Malcolm George Millard t/a M&M Haulage HGV – KM – 11.03.16 – 27.06.16 <i>Adequacy of Reasons</i>	Allowed, Remitted
T/2015/70	George McMinn	Withdrawn
T/2015/70	Stephen Duncan	Dismissed
T/2015/73	Lance Laws t/a Lotus Travel	Dismissed
T/2015/72	Rose Transport Limited, J Walters and G Walters	Allowed
T/2015/74	Ian Phillips HGV – EM – 17.03.16 – 22.03.16 – Allowed and remitted <i>Termination by law, death of partner; Other, direction under Regulation 31</i>	
T/2015/77	Hurley G & B Ltd	Dismissed
T/2015/78	Black Velvet Travel Ltd, Western Greyhound Ltd & Michael John Bishop	Dismissed
T/2015/79	John Allan	Dismissed

**2016**

**From 2016 onwards, only the number, name and result of appeals will be provided.**

NT/2016/2	365 NI Group Ltd	Dismissed
T/2016/03	Ian Lambert t/a IKL Transport	Allowed, Remitted
T/2016/7	Mr W Miekle t/a MBS Transport	Dismissed
T/2016/08	Van Der Gaag Transport De Lier BV v DVSA	Dismissed

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T/2016/13	SNE Hire & Sales Ltd	Dismissed
T/2016/16	Shaid Khaliq t/a Alpha Cars	Dismissed
T/2016/18	Eric Leslie Brown	Allowed, Remitted
T/2016/21	Adbul Uddin	Dismissed
T/2016/24	Michael Hazell	Allowed in Part
T/2016/26	Mr J Campbell t/a Vision Travel	Dismissed
T/2016/27	K McDonald t/a River Tay Executive Travel	Dismissed
T/2016/31	Tunnell Grab Services Ltd	Dismissed
T/2016/32	Darren Gerald Brooks t/a GTO Machines and Metals	Dismissed
NT/2016/33	Anthony Joseph Baxter t/a Baxter's Transport	Allowed
T/2016/36	Darren John Worsley	Dismissed
T/2016/38	Graeme Robertson	Dismissed
T/2016/39	Daren Michael Smith t/a DMS Scaffolding	Dismissed
T/2016/41	Euromar Ltd	Dismissed
T/2016/44	Sana Aziz	Dismissed
T/2016/45	Mandeep Bains t/a Midland Minibus Hire	Dismissed
T/2016/46	R & M Vehicle Ltd, G Holgate, M Holgate	Dismissed
T/2016/47	George R Cran Transport Ltd	Allowed
T/2016/49	Ronald Alexander Henry	Dismissed
T/2016/50	L Baldwin, Andrew Skelton, W Baldwin	Allowed (LB, AS) Dismissed (WB)
T/2016/55	Raymond Kyle Heard t/a Kyle's Exec Travel	Dismissed
T/2016/56	Tracy Noddings t/a Noddies Cars	Dismissed
T/2016/59	Adrian John Dalton	Dismissed
T/2016/65	Carrie McKendry	Dismissed
T/2016/66	Douglas McKendry	Dismissed
T/2016/68	Shaun Thomas Britton	Dismissed

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T/2016/69	Chigwell Taxi Co Ltd	Dismissed
T/2016/72	Catch 22 Ltd and Phillip Higgs	Dismissed
T/2016/73	Pauline Hukin t/a Red Fox Travel	Allowed
T/2016/74	Christchurch Coaches Ltd	Dismissed
<b>2017</b>		
T/2017/02	Mohammed Akbar t/a Choudhury Transport	Dismissed
T/2017/03	Ross Munro and Helen Pettigrew (Partnership)	Allowed
T/2017/04	Patricia Bakewell	Allowed
T/201707	Michael Hazell (No.2)	Dismissed
NT/2017/11	Rockmount Services Ltd	Allowed
T/2017/15	Live Events at Networks3D Ltd	Dismissed
NT/2017/16	Damien Toner	Allowed
T/2017/18	Davis Haulage Group Ltd	Allowed
T/2017/25	Mr K Kapacee t/a Zara Travel	Dismissed
NT/2017/26	Derek Lyons	Dismissed
NT/2017/27	Easy Go Transport Ltd	Allowed
T/2017/29	Fawcett Transport Ltd	Allowed
T/2017/33	Paul Andrew Nimmo t/a P & N Travel	Dismissed
T/2017/35	David Irving Ltd	Dismissed
T/2017/36	S C Cousins Scaffolding Ltd	Allowed
T/2017/38	J & K Environmental Services Ltd and L Manole	Allowed (limited)
T/2017/41	G & E Robertson t/a GE Recovery	Dismissed
NT/2017/42	Mark Lyons	Dismissed
T/2017/45	Gilders Transport Ltd	Allowed
T/2017/47	Wish Travel and Transportation Services Ltd	Dismissed
T/2017/52	Kibex Ltd and Paula Baillie	Dismissed



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T/2017/55	Alistair Walter	Allowed
T/2017/63	Tanseys Coaches Ltd	Dismissed
T/2017/64	Skene Transport Ltd and Judith Paterson	Dismissed
T/2017/67	David Randle	Dismissed
T/2017/68	Peter Wright	Dismissed
T/2017/72	Reads Worldwide Ltd	Dismissed
T/2017/76	Andrew Steven Gingell v DVSA	Dismissed
NT/2017/79	Clanabogan Coal Company Ltd	Dismissed
T/2017/80	North Warwickshire Travel Ltd and M James	Allowed
T/2017/83	Philip Thomas t/a Thompson Coaches	Allowed
<b>2018</b>		
T/2018/01	David King t/a Military World	Dismissed
T/2018/03	Yvonne Bartram	Allowed (technical)
T/2018/09	Enviro Kleen (Scotland) Ltd	Allowed
T/2018/10	Mr C Ingram (t/a T.I.P. Skips)	Dismissed
T/2018/11	Skyrider Ltd	Dismissed
T/2018/12	Maurice Dale	Dismissed
T/2018/17	North Warwickshire Travel Ltd (no.2) and Michael James	Dismissed
T/2018/19	T.R. Benney Transport Ltd and T Benney	Dismissed
T/2018/20	Midland Container Logistics Ltd	Allowed
T/2018/22	Sheppard Commercial Service Ltd	Allowed
T/2018/23	Camiers Group Ltd	Allowed
T/2018/25	Shaun Stark	Dismissed
T/2018/27	Allen Transport Ltd and Daniel Allen	Allowed (in part)
T/2018/28	D K Barnsley & Sons Ltd	Allowed

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T/2018/29	Adam Hayes	Dismissed
T/2018/32	Atbus Ltd	Allowed
T/2018/33	A Bros Halal Meat Ltd	Dismissed
T/2018/35	Rashed Mahmood t/a Rashed Travels	Allowed
T/2018/36	Wajid Bahir t/a MB Travel	Dismissed
T/2018/38	Steven James Lambie	Allowed (in part)
T/2018/44	Sheraz Asghar	Dismissed
T/2018/45	Ian Francis Hayman	Dismissed
T/2018/46	Mark Clinton	Dismissed
T/2018/48	BKG Transport Ltd Whiteparish Transport Ltd Terry Glover Tony Glover	Dismissed
T/2018/49	Kuldip Chahal t/a Toon Party Bus	Dismissed
T/2018/50	Diamond Bus Ltd	Dismissed
NT/2018/52	Stephen McKenna	Dismissed
NT/2018/55	Albert Keenan	Dismissed
NT/2018/58	Curraghoe Construction Ltd	Dismissed
T/2018/59	Mark Anthony Warren	Dismissed
T/2018/64	Ghaffar Hussain t/a GAF Minibus Service	Dismissed
T/2018/65	Lindsay Craft	Dismissed
T/2018/66	Abus Ltd	Allowed
T/2018/67	Daniel Jemmett	Dismissed
T/2018/68	D&A Freight Logistics Ltd D&A 003 Ltd	Allowed Dismissed
T/2018/69	Trans Euro Group Ltd and Kapur Nandra	Dismissed
T/2018/72	St Mickalos Co Ltd and Michael Timinis	Allowed
T/2018/75	P Elsagood Transport Services Ltd	Dismissed
T/2018/78	Peter Jones	Dismissed

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T/2018/81	J A Dickie Truckin Ltd and John McCormack	Withdrawn
T/2018/82	CBM Civils Ltd	Allowed
<b>2019</b>		
T/2019/01	Hall Bros Transport Ltd and Peter Hall	Dismissed
T/2019/04	Thomas Malcom	Dismissed
T/2019/08	CGR (CG Rosulete) Ltd and Others	Dismissed
T/2019/09	Absolute Business Services (Scotland) Ltd	Dismissed
T/2019/11	V Larkin Ltd t/a Olympic Scaffolding and Others	Dismissed
T/2019/14	ACE Car Disposal & Spares Ltd	Allowed
T/2019/16	Coach Hire Surrey Ltd and Paul Jones	Dismissed
T/2019/24	The Skiers Lodge Ltd t/a TSL TSL (Wales) Ltd Andrew Martin Express Airport Transfers (Europe) Ltd	Dismissed Dismissed Allowed (in part) Dismissed
T/2019/25	John Stuart Strachan t/a Strachan Haulage	Dismissed
T/2019/26	MacDonald Groundworks Ltd	Allowed (in part)
T/2019/32	C M Coaches Ltd	Allowed
T/2019/33	Michael Hazell	Allowed
T/2019/30	T A Trucking Ltd	Dismissed
T/2019/34	Dekkabus Ltd and Mark Self	Dismissed
T/2019/36	Phillip Liddle	Dismissed
T/2019/39	Upright Scaffolding Ltd	Dismissed
NT/2019/40	Gerald Hynds	Allowed (in part)
T/2019/47	Keith Bute	Allowed (in part)
NT/2019/49	Roger Llewelyn	Allowed (in part)
T/2019/51	Clarks Caravan & Boat Haulage Ltd and Others	Dismissed
T/2019/54	Bridgestep Limited and Tom Bridge	Allowed (in part)

Part 2: Chronological List of Decisions

T/2019/55	Samra Foodservice Ltd and H S Samara	Dismissed
NT/2019/62	SPIE Ltd	Dismissed
T/2019/63	Gabriel Grigoroiu	Allowed
T/2019/64	Terence Hebden	Dismissed
NT/2019/65	John Monaghan and Partners	Dismissed
T/2019/69	GS Couriers (Nottingham Ltd) Richard Gething-Smith Louise Gething-Smith	Allowed
T/2019/70	William James Burnett t/a Bearwood Coaches	Allowed
T/2019/71	Alan John Woolley trading as Dolphin Travel	Dismissed
T/2019/74	M White (Skips) Ltd	Dismissed
T/2019/76	Armthorpe Skips Ltd	Dismissed
T/2019/77	George Young's Coaches Ltd Kevin Young Gwendoline Young	Dismissed

**2020**

T/2020/09	Paccar Fiancial Polska Sp. Zo.O	Allowed
T/2020/10	Progress Logistics Ltd	Allowed
T/2020/11	James Civil Engineering Ltd	Dismissed
T/2020/12	Michael Hazell	Allowed (in part)
T/2020/17	Roger Llewellyn	Dismissed
T/2020/18	Gaskells Midlands Ltd	Allowed
T/2020/19	Edward Berry	Dismissed
T/2020/20	Parker Body Repairs Ltd	Dismissed
T/2020/21	EBF International Ltd	Dismissed
NT/2020/22	Phelim Teggart	Dismissed
T/2020/24	Baljit Singh Atwal	Dismissed
T/2020/26	Transform Driveways Ltd	Dismissed

Part 2: Chronological List of Decisions

T/2020/27	N.A.P. Anglia Ltd	Dismissed
T/2020/28	Gower Plant Hire Ltd	Allowed
T/2020/29	Transkold Ltd	Dismissed
T/2020/30	Phantom Limo Hire Limited	Dismissed
T/2020/33	St Joseph Executive Travels Gatwick Ltd	Dismissed
T/2020/34	Eluwumi Elusade t/a Wumibus Express	Dismissed
T/2020/37	Kast Logistics Ltd	Dismissed
T/2020/38	Verdi Transport Ltd	Dismissed
T/2020/41 T/2020/42	(1) Bunny Transport Ltd & (2) Carol Grayling	Dismissed
T/2020/43	R and J Metals Ltd	Dismissed
T/2020/44	South View Scaffolding Ltd	Dismissed
T/2020/50	Ammanford Recycling Ltd	Dismissed
T/2020/53	K Ollett Ltd	Allowed
T/2020/55	URA Ventures Ltd	Dismissed
T/2020/60	Mann UK Ltd	Dismissed
T/2020/62	Christchurch Travel Ltd	Dismissed
T/2020/63	Heritage Trade Frames Ltd	Dismissed
T/2020/64	Manzoor Hussain Shah	Allowed
T/2020/65	Completely Interiors Southern Limited	Dismissed
T/2020/66	(1) Thandi Coaches (Red) Ltd; (2) Amardeep Thandi	Allowed
T/2020/68	Mohammad Hussain Mansha t/a Taxi 8	Dismissed
T/2020/70	Jack Reynolds t/a Isle of Limos	Dismissed
T/2020/71	J Owens Transport Ltd	Dismissed
T/2020/72	Cambridge Removals & Storage Ltd	Dismissed

**2021**

T/2021/02	Mr Huw Jones t/a Tacsí Amlwch	Dismissed
T/2021/04	Christopher Bryan Haulage (No.2)	Dismissed
T/2021/05	R D Richards Ltd	Dismissed
T/2021/06	Delivery Demons Ltd	Dismissed
T/2021/07	Gigrigs Backline Transport Limited	Dismissed
NT/2021/11	Trevor Cathers and Trevor Cathers Ltd	Dismissed
T/2021/20	Liliana Elena Manole	Allowed
T/2021/22	Thomas Poole	Dismissed
NT/2021/23	KMC Transport Ltd	Dismissed
T/2021/25	(1) MBBStrans Ltd (2) MTM Skip Hire Ltd (3) Przemyslaw Zalecki	Dismissed
T/2021/26	Alana Creations Ltd	Dismissed
T/2021/27	Less Stress Relocations Ltd	Dismissed
T/2021/29	Zeeshan Aurangzeb	Allowed
T/2021/30	Raymond Leonard Sheaf	Dismissed
T/2021/35	Kamil Kodzik Transport Limited	Dismissed
T/2021/36	Ferndown Commercials Ltd	Dismissed
T/2021/38	Paula Jane Morris t/a Miss Bus	Allowed
T/2021/45	West Midlands Machinery Services Ltd:	Allowed
T/2021/46	James Reilly	Dismissed
T/2021/51	Belistore Limited	Dismissed
T/2021/52	Blackmur T/A IJB Transport	Dismissed
UA-2021-000018-T	Egertons Recovery Group Limited	Dismissed
UA-2021-000019-T	Nico 2014 Limited	Dismissed
UA-2021-000023-T	Van Duijn Fleet BF & Transportbedrijf van Duijn en Zn.Bv	Dismissed

Part 2: Chronological List of Decisions

UA-2021-000040-T	RAM Logistics Ltd	Allowed
UA-2021-000056-T	ADA Haulage Ltd	Dismissed
UA-2021-000204-T	Kent Solutions UK Limited; David Coburn	Dismissed
UA-2021-000225-T	Paul Bamber	Allowed
UA-2021-000227-T	Chris Dodd & Jim Pyle trading as Seaside Shuttlebus	Allowed
UA-2021-000244-T	Mulberry Automotives	Dismissed
UA-2021-000300-T	T-Square Scaffolding Limited	Dismissed
UA-2021-000326-T	RJ Rutledge Ltd	Allowed
UA-2021-000329-T	Wychwood School Oxford Ltd	Dismissed
UA-2021-000333-T	S & D Haulage Ltd	Dismissed
UA-2021-000339-T	Harris Travel Limited	Dismissed
UA-2021-000465-T	Liliana Manole	Dismissed
UA-2021-000467-T	D A Prime Log Ltd	Dismissed
UA-2021-000504-T UA-2021-000553-T	(1) Andrew Hopkins and (2) Tonna Luxury Coaches Ltd	Dismissed
UA-2021-000523-NT	NI Truck Rentals Ltd	Allowed in part
UA-2021-000561-T	Pawel Damian Kaptur and KPD Haulage Ltd	Dismissed
UA-2021-000565-T	Clayton Frances Jones trading	Dismissed
UA-2021-000566-T	Kevin McCaul t/a McCaul Transport	Dismissed
UA-2021-000573-T	Agri-Tel (Devon) Limited (Keith Lerwill)	Dismissed
UA-2021-002165-T	Connor Construction (South West) Ltd	Allowed
UA-2021-002166-NT	Oakridge Agri Ltd	Allowed
UA-2021-002168-T	PED Plant Ltd	Dismissed
UA-2021-002173-T	ALPS Scaffolding Ltd	Dismissed

**2022**

UA-2022-000001-NT	Derrymorgan Transport Ltd	Dismissed
UA-2022-000004-NT	Andrew Murphy Transport Ltd	Dismissed
UA-2022-000010-T	HRA Builders Merchants Ltd	Allowed
UA-2022-000030-T	Mr James Kilpatrick	Dismissed
UA-2022-000035-NT	Land of Dream Bedding Ltd	Allowed
UA-2022-000044-T	Secure Transit Solutions Ltd	Dismissed
UA-2022-000057-T	Brett Pennells	Dismissed
UA-2022-000059-NT	Slemish Group Ltd	Dismissed
UA-2022-000064-NT	Interbev Ireland Ltd	Dismissed
UA-2022-000072-T	Peter Bandon Firepro	Allowed
UA-2022-000083-T	REL Haulage Limited	Allowed
UA-2022-000207-T	David Donald	Dismissed
UA-2022-000246-T	Jay's Vehicle Movers Ltd	Allowed
UA-2022-000274-T	MDT European Ltd	Dismissed
UA-2022-000361-T	Mohammed Assan Momin	Dismissed
UA-2022-000480-NT	Mr Mark McBurney t/a MMB Haulage	Dismissed
UA-2022-000538-T	Pamela Hibberd	Allowed
UA-2022-000581-T	Mika Logistics Limited	Dismissed
UA-2022-000582-NT	Arkle Finance Ltd	Allowed in part
UA-2022-000589-T	Bulk Tranz Haulage Ltd. Bulgaria	Dismissed
UA-2022-000599-T	Jasbir Singh & R&J Transport PVT Ltd	Dismissed
UA-2022-000658-NT	Stephen Peter Hurley	Allowed
UA-2022-000705-T	Paul Jarvis	Allowed
UA-2022-000752-T	Kent Haulage Systems Ltd	Dismissed



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UA-2022-000796-T	Christopher Dagnall	Dismissed
UA-2022-000808-T	Mr BM Shipp and Mrs MC Shipp	Dismissed
UA-2022-000811-NT	Deborah Marie Toner T/A DDT Haulage	Allowed
UA-2022-000841-T	Shift-It Groundworks (North West) Ltd	Dismissed
UA-2022-001205-T	T & M Contracts Ltd and Mr Michael Lally	Dismissed
UA-2022-001227-T	Lineage UK Transport Ltd	Dismissed
UA-2022-001228-T	Nadeem Iqbal Butt t/a Communitywide Travel Services	Dismissed
UA-2022-001319-T	LKW Trans Ltd	Allowed
UA-2022-001378-T	Robert Brow	Dismissed
UA-2022-001500-T	DFL Transport Ltd	Dismissed
UA-2022-001525-NT	Deborah Marie Toner T/A DDT Haulage	Allowed
UA-2022-001528-T	Philip Drake	Dismissed
<b>2023</b>		
UA-2023-000144-T	Leafy Designs Ltd	Dismissed
UA-2023-000014-T	Georgia Kelly Ash	Allowed
UA-2023-000725-T	Fresh Start for Hens CIC	Dismissed