



Compass Chambers

Hearings before the Traffic Commissioner

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Compass Chambers

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Compass Chambers

The Traffic Commissioner in Context

Heavy Good Vehicle (HGV)



Public Service Vehicle (PSV)





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The Traffic Commissioner in Context

89% of all goods transported by land in Great Britain are moved directly by road (but even the 20% that is not moved by road often needs road haulage to complete journeys to/from ports, airports or rail terminals).

98% of all food and agricultural products in Great Britain are transported by road freight.

98% of all consumer products and machinery in Great Britain are transported by road freight.

2.54 million people work in the haulage and logistics industry.

The sector is the UK's fifth largest employer.

600,000 Goods Vehicle driving licence holders.

Industry worth £124 Billion Gross Value Added (GVA) to UK economy.

493,600 commercial vehicles over 3.5 tonnes are registered in the UK.

Source: Road Haulage Association

The Traffic Commissioner in Context

TABLE 1: GOODS VEHICLE OPERATORS - LICENCES CONTINUED AND IN ISSUE
2018-19 2017-18

	Type of Licence			Total number of licences in issue	Total continuations sought	Continuations not sought

	Restricted	Standard National	Standard International			
Scotland	2772	2498	542	5812	928	198
	2893	2588	525	6006	902	230

TABLE 2: GOODS VEHICLE OPERATORS - NUMBERS OF SPECIFIED VEHICLES ON LICENCES
2018-19 2017-18

	Specified vehicles by type of licence			Total number of specified vehicles	Certified copies of European Community Licences

	Restricted	Standard National	Standard International		
Scotland	6714	20079	5481	32274	2220
	6970	20160	5367	32497	2100

Source: Traffic Commissioners for Great Britain Annual Report 2018-19

The Traffic Commissioner in Context

95 million passenger journeys on local bus services in Scotland in the first quarter of 2019.

Source: Department for Transport Statistics

TABLE 8: BUS AND COACH OPERATORS - LICENCES CONTINUED AND IN ISSUE
2018-19 2017-18

	Restricted	Standard National	Standard International	Total number of licences in issue	Total continuations sought
Scotland	286	393	140	819	103
	315	421	145	881	124

Source: Traffic Commissioners for Great Britain Annual Report 2018-19

The Traffic Commissioner in Context

TABLE 13: LOCAL BUS SERVICE REGISTRATIONS - LIVE, NEW, VARIATIONS AND CANCELLED LOCAL BUS SERVICES 31 MARCH 2019 31 MARCH 2018

	Live local bus registrations	Applications processed		Applications accepted		Refused	Withdrawn	Existing registrations cancelled
		New	Variations	New	Variations			
Scotland	3055	313	938	313	938	0	0	359
	3095	288	1300	288	1300	0	4	306

TABLE 15: BUS AND COACH OPERATORS - NUMBER OF STANDARD, LARGE AND COMMUNITY BUS PERMITS ISSUED 2018-19 2017-18

	Standard Bus Permits Issued by			Total	Large Bus Permits	Community Bus Permits
	Traffic Commissioners	Local authorities	Designated bodies			
Scotland	375	212	337	924	46	13
	275	91	148	514	6	4

Building Blocks



Building Blocks

1. What is the role of the Traffic Commissioner?
2. Matters heard before the Traffic Commissioner
3. Powers of the Traffic Commissioner

The role of the Traffic Commissioner

“The Traffic Commissioners for Great Britain (TCs) are independent regulators for the heavy goods vehicle (HGV) and public service vehicle (PSV) industries and their professional drivers.”

Traffic Commissioners for Great Britain Annual Report 2018-19

The role of the Traffic Commissioner

1. The licensing of the operators of HGVs and PSVs.
2. The registration of local bus services.
3. Granting vocational licences and taking action against drivers of HGVs and PSVs.
4. The environmental suitability of centres designated as parking locations for HGVs.

The role of the Traffic Commissioner

- The UK is divided into 8 traffic areas, each with their own Traffic Commissioner. Scotland is one such area.
- From February 2019, the Traffic Commissioner for Scotland is Claire Gilmore. Hugh Olson continues in his role as the Deputy Traffic Commissioner.
- The current Senior Traffic Commissioner is Richard Turfitt.



Matters heard before the Traffic Commissioner

1. Public Inquires regarding Operator's Licences.
2. Driver conduct hearings.

Matters heard before the Traffic Commissioner

**TABLE 6: GOODS VEHICLE OPERATORS - ACTION TAKEN AT PUBLIC INQUIRY FOR NON-COMPLIANCE
2018-19 2017-18**

	Number of public inquiries completed	Licence revocations	Licence suspensions	Curtailment or conditions imposed	Notification of formal warning	Disqualification of licence holder under Section 28	Disqualification of transport manager	No action taken
Scotland	70	17	15	35	32	6	2	5
	64	18	10	12	17	7	5	11

Note: the figures in the last seven columns may not equal the number of public inquiries completed, as more than one action may be taken against a licence holder.

**TABLE 16: BUS AND COACH OPERATORS - ACTION TAKEN AT PUBLIC INQUIRY FOR NON COMPLIANCE (UNDER THE PUBLIC PASSENGER VEHICLES ACT 1981)
2018-19 2017-18**

	Number of public inquiries completed	Licence revocations	Licence suspensions	Reduction of vehicles authorised on licence	Other conditions imposed on licence	Formal warning given	Disqualification of licence holder under the 1985 Act	Disqualification of transport manager	No action taken
Scotland	17	10	1	5	1	4	4	1	3
	27	7	3	4	2	7	3	1	5

Note: the figures in the last 8 columns may not equal the number of public inquiries held, as more than one action may be taken against a licence holder.

Matters heard before the Traffic Commissioner

TABLE 18: WORK OF THE TRAFFIC COMMISSIONERS AND THEIR DEPUTIES ON PUBLIC INQUIRIES

2018-19 2017-18

	Traffic Commissioners	Deputy Traffic Commissioners	Total
Scotland	139	35	174
	128	27	155

TABLE 20: LGV AND PCV DRIVER CONDUCT CASES - ACTION AGAINST DRIVERS

2018-19 2017-18

	Total cases closed	Licences refused	Licences revoked	Licences suspended	Licences granted	Verbal warning	Routine warning letters		Refer on application	No action taken	Called to a hearing
							Endorsable	Non-endorsable			
Scotland	2,670	273	41	185	225	99	218	96	86	1,471	564
	2,753	262	46	143	282	168	229	24	116	1,444	544

Source: Traffic Commissioners for Great Britain Annual Report 2018-19

Matters heard before the Traffic Commissioner

Public Inquires regarding Operator's Licences

1. Non - compliance with licence conditions.
2. New and variation of licence applications.



Matters heard before the Traffic Commissioner

Driver conduct hearings

1. Criminal convictions.
2. Breaching drivers hours requirements.

Powers of the Traffic Commissioner

Legislation:

1. Public Passenger Vehicles Act 1981.
2. Good Vehicles (Licensing of Operators) Act 1995.
3. Goods Vehicles (Licensing of Operators) Regulations 1995.
4. Public Service Vehicles (Operators' Licences) Regulations 1995.

Powers of the Traffic Commissioner

Public Inquires regarding Operator's licences:

1. Licence refused/revoked .
2. Licence suspended.
3. Licence granted.
4. Curtailment or conditions imposed.
5. Formal warning.
6. Disqualification of licence holder.
7. Disqualification of transport manager.
8. No action.



Powers of the Traffic Commissioner

Driver conduct hearing:

1. Licence refused/revoked.
2. Licence suspended.
3. Licence granted.
4. Verbal warning.



Powers of the Traffic Commissioner

Test for revocation of an Operator's licence – a preliminary question:

“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’.**”

Priority Freight 2009/225

Powers of the Traffic Commissioner

Test for revocation of an Operator's licence:

“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.”

Bryan Haulage Ltd v Vehicle Inspectorate (No.2) 217/2002



Powers of the Traffic Commissioner

Suspension

The Traffic Commissioner should consider the likely consequences if suspension is ordered. Suspension is not mandatory, but dependant on circumstances.

However, it is important to bear in mind the following:

“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”.

Dundee Plant Company Ltd T/2013/47

The passage above also applies to cases of curtailment.



Powers of the Traffic Commissioner

Disqualification of licence holders

“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.”

David Fitch Haulage T/2010/29

While providing guidance about the correct approach to disqualification, *Fitch* is unlikely to assist in relation to the length of a disqualification. 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 – see *C G Cargo Ltd (Operator) & Sukwinder Singh Sandhu (Director) T/2014/40 & 41*

Powers of the Traffic Commissioner

Disqualification of Transport Managers

- Disqualification is mandatory following a finding that Transport Managers are no longer of good repute or no longer professionally competent (Transport Managers must hold a valid Transport Manager CPC).
- The Traffic Commissioner can impose a 'rehabilitation measure' which prevents the affected person applying to cancel or vary the disqualification until the measure has been complied with.

Preparation for the Public Inquiry



Preparation for the Public Inquiry

When is the Inquiry?

Tight timescales:

- At least 28 days notice for a Public Inquiry regarding a transport manager.
- At least 21 days notice for an existing HGV licence or application.
- At least 14 days notice for an existing PSV licence or application.

The Inquiry Brief

Consider this carefully. This details the issues to be raised at the Inquiry and contains the material lodged by the DVSA and/or third parties with the Traffic Commissioner that will be considered at the Public Inquiry.

Preparation for the Public Inquiry

Potential issues

1. Prohibition notices & failures in maintenance.
2. Exceeding drivers hours requirements.
3. Suitability of operating centres.
4. Third party objectors.
5. Breaches of undertakings.
6. Loss of repute by the licence holder and/or transport manager.
7. Financial standing.
8. Shadow directors.
9. Legal personality.

Preparation for the Public Inquiry

Matters to address before the Inquiry

1. Who should attend the Inquiry?
 - The owner if the operator/applicant is a sole trader.
 - The partners if the operator/applicant is a partnership.
 - At least one director if if the operator/applicant is a company or LLP.
 - The transport manager.

2. Funding
 - No provision to seek an award of expenses.
 - Does the client have legal expenses insurance cover?

3. Meet the client.

Preparation for the Public Inquiry

Matters to address before the Inquiry

4. Is the evidence of the DVSA challenged?
5. What witnesses are you calling?
6. Are you lodging any productions?
7. Does the client have contingencies in place for the regulatory action that could be taken by the Traffic Commissioner?

The Public Inquiry





The Public Inquiry

- Public Inquiries are open to members of the public with the exception of the consideration of financial standing or matters concerning medical issues. Such issues are addressed in private sessions.
- Public Inquiries concerning larger operators, including public bodies, have been the subject of press attention.
- Evidence is not given under oath but the requirement to tell the truth remains. A failure by an operator or transport manager to tell the truth at a Public Inquiry could lead to an adverse finding relating to their fitness and repute to hold a licence.
- Proceedings are recorded.

The Public Inquiry

- The burden of proof that applies is the ‘balance of probabilities’.
- The format of the hearing is determined by the Traffic Commissioner. They determine what is relevant for the purpose of the hearing and will ask questions of all parties.
- Those giving evidence can be cross - examined by the application/operator. The Traffic Commissioner may also ask the DVSA officer present at the Public Inquiry if they wish to ask any questions.



The Public Inquiry

A typical Public Inquiry will follow the following structure:

1. Preliminary matters.
2. DVSA evidence.
3. Comment and evidence from any third party objector.
4. Operator's evidence.
5. Financial Standing - Closed session.
6. Submissions.
7. Decision.

The Public Inquiry

Submissions

- Refer to the relevant tests.
- Recognise the severity of and failures by the operator but seek to mitigate the regulatory action to allow the operator to continue to trade (as far as possible).
- For an existing operator, it is possible to seek grace periods to demonstrate compliance. However, such periods are **not** obligatory:

Shortcoming		Maximum Period of Grace
Transport Manager	Departure from employment	6 months
	Death or physical incapacity	6 + 3 months
Effective & Stable Establishment		6 months
Financial Standing		6 months to demonstrate that the requirement will be met <i>on a permanent basis</i>

The Public Inquiry

After the Public Inquiry

- Written decision.
- Revert to the client to confirm understanding of and compliance with the Traffic Commissioner's decision.
- Review by the Traffic Commissioner where a procedural requirement has not been complied with.
- Appeal to the Upper Tribunal. Any appeal to be made within 1 month of the Traffic Commissioner's decision.



Compass Chambers

Questions?



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