

road transport services public inquiry



A public inquiry is a complex area of law that requires expert advice to maximise the operator's chances of retaining good repute and hence eligible to hold their licence.

What is it?

A formal hearing held by a Traffic Commissioner who is the regulator responsible for issuing of operator's licences and for taking action against licence holders/ transport managers who fail to comply with their licence undertakings and obligations.

Who does it affect?

- New applicants for an operator's licence
- Existing holders applying for licence variations
- Licence holders who are mismanaging their licences
- Transport managers.

Why are the above called in to such a hearing?

Usually this is because the Traffic Commissioner wishes to explore the background to an application and/or take regulatory action against a current licence and/or a transport manager because of non-compliance with either the Goods Vehicle (Licencing of Operators) Act 1986 or the Public Passengers Vehicles Act 1981.

What evidence will be considered?

For you or your company to hold an operator's licence or continue to hold one the Traffic Commissioner needs to be satisfied that the holder of a Standard National or Standard International licence is:

- Of good repute
- Has sufficient resources to meet financial standing
- Is professionally competent.

For Restricted licence holders (those who only wish to carry own goods, not third party goods) professional competence does not apply but operators must meet financial standing requirements and not be unfit to hold a licence.

The Traffic Commissioner will also wish to see that arrangements are in hand to monitor the use of tachographs, adherence to driver's hours and working time regulations.

He or she will examine whether the vehicles are parking at a designated operating centre, and whether he or she should consider any environmental objections from other parties where new operating centres are applied for.

'Repute' focuses on a range of fitness issues, amongst others whether an individual licence holder or employee has been convicted of certain road transport or road haulage offences, whether such offences were notified to the Traffic Commissioners office, together with any information which appears to relate to the individual's, or company's, fitness to hold a licence.

For Standard and International Licence holders and nominated Transport Managers certain offences are regarded as most serious infringements (MSIs) or the 'seven deadly sins' and are naturally viewed more seriously. Repute must automatically be lost unless a Traffic Commissioner determines this would be disproportionate, and if repute is lost, the loss of operators licence will follow.

How do Traffic Commissioners become aware of any shortcomings to an operator's licence?

This can happen in any number of ways including specific roadside enforcement events or because of closer scrutiny when variation of an operators licence is applied for e.g. where vehicles are stopped by DVSA and found to have a faults or infringements resulting in the issue of a prohibition notice. Following this, the licence holder's MOT pass rate may be inspected by the DVSA examiner, and be found to be below the national average. This will suggest there are shortcomings in the maintenance regime adopted by the licence holders.

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Similarly a licence holder may make an application to increase the size of his fleet. An examination of the history of the licence shows the commission of transport offences, shortcomings in maintenance, and/or drivers' hours infringements, plus bank statements submitted may show insufficient funds to satisfy the financial standing requirement. These are just two examples of where there may be issues that need to be examined further at a public inquiry held by the Traffic Commissioner.

The Office of the Traffic Commissioner will often correspond with the licence holder to seek an explanation. The responses to these enquiries often determine whether matters will proceed to an interview with a senior team leader working for the Traffic Commissioner, a preliminary hearing or a full public inquiry. The key here is to ensure measures are in place to counter such criticism. These may include replacing an inefficient maintenance provider, retraining or undertaking disciplinary action to counter poor compliance.

How should I react if at risk of a Public Inquiry?

It is essential that you demonstrate early consideration of any issue. Traffic Commissioners look at the speed and degree of any operator's responses as being indicative of their attitude to things going wrong. Such responses are recognised in case law as being divided into four groups of operators:

- 1 Firstly, those who recognise the problem at once and take immediate and effective steps to put things right.
- 2 Secondly, those who only recognise the problem when it is set out in the public inquiry call-up letter and then only begin to put matters right the period before the public inquiry.
- 3 The third group leave it even later and go to the public inquiry with promises of 'action in the future', and
- 4 Finally those who 'bury their heads their heads in the sand and wait to be told what to do during the public inquiry'.

What should I do?

React quickly. Don't delay. Seek advice. Make a telephone call to us to discuss your case. **A short initial telephone consultation is free.**

You will need to address matters before the hearing. Public inquiries are often stressful and you will need to be properly prepared. You may have only three weeks to prepare for the hearing.

Open and transparent communication with the Officer of the Traffic Commissioner can increase your prospects of a better outcome.

Alternatively you may have months before the inquiry to correct shortcomings and address procedures and processes to

demonstrate that you are serious about compliance. We cannot emphasize enough that early intervention with assistance and guidance is paramount. Use this time to create 'blue water' between earlier problems and good current compliance.

Outcome of the hearing

The procedure during the hearing is necessarily formal and although evidence is not given under oath, witnesses are required to tell the truth at all times.

The Traffic Commissioner will undertake a forensic analysis of the issues with reference to documents prepared by his office and served on the operator. These will identify the issues in question and outline what type of action he or she may be considering.

Such action depends on what the Traffic Commissioner is being asked to consider. So therefore they may take the following action:

- 1 If it is an application or variation they may grant it or refuse it, attach conditions or only grant a licence allowing fewer vehicles than the number applied for.
- 2 If they are considering regulatory action against the current licence holders they may:
 - Take no further action
 - Issue a warning
 - Revoke, suspend or curtail the licence. They may also disqualify an individual or company from having a licence (though only on revocation) or disqualify transport managers.

What next?

We are happy to meet you at your operating centre, our offices or any other location that suits you. Whatever you do it is important that you make contact with us to ensure action is taken as soon as possible given that the future of your business is potentially in the Traffic Commissioner's hands.

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