

**Office of the  
Traffic Commissioner**

The Director  
Aberdeen City Council  
Contracting Services Department  
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Mrs Carol Riley  
Caseworker  
Office of the Traffic Commissioner for the  
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Our Ref: OM0021187

2 OCTOBER 2014

**Dear Sir or Madam**

**PUBLIC INQUIRY INTO YOUR GOODS VEHICLES OPERATOR'S LICENCE  
OM0021187  
THIS LETTER REQUIRES URGENT ATTENTION**

I refer to the recent maintenance investigation carried out by DVSA and the notice of shortcomings issued to you on 14 January 2014.

The Traffic Commissioner has reviewed your case and is concerned about aspects of your operation. She has therefore decided to hold a **public inquiry**, to investigate these apparent shortcomings and to give you the opportunity to explain what you are doing to improve compliance with the rules and show evidence to support this. The Traffic Commissioner will then decide whether she can trust you to comply in the future, whether any action against your goods vehicles operator's licence is needed and, if so, what form that action might take.

The inquiry will be held at The Employment Tribunal, Atholl House, 84-88 Guild Street, Aberdeen AB11 6LT **on Tuesday 18 November 2014 at 10.45am**

**The issues**

Specifically, the issues of concern to the Traffic Commissioner are that:

- a) your vehicles or drivers have been issued with prohibition notices by VOSA or the police in the past five years;<sup>1</sup>
- b) the following statements you made when applying for the licence were either false or have not been fulfilled<sup>2</sup>:

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<sup>1</sup> See section 26(1)(c) (iii) of the 1995 Act

<sup>2</sup> See section 26(1)(e) of the 1995 Act

The '1995 Act' refers to the Goods Vehicles (Licensing of Operators) Act 1995

- i. that your vehicles and trailers would be inspected at the 8 weekly and 12 weekly intervals you promised they would be;
  - ii. that you would notify the Traffic Commissioner within 28 days of any convictions incurred by the licence holder or its employees, of any changes to the maintenance arrangements, or of any changes in financial status that might affect the licence;
  - iii. that you/your staff usually carry out your own **Vehicle and Trailer** repairs;
  - iv. that safety inspections and/or maintenance and repair work would be carried out in house;
- c) you have not honoured the undertakings you signed up to when you applied for your licence<sup>3</sup>, namely
- i. that your vehicles [and trailers] would be kept fit and serviceable;
  - ii. that you would keep records for 15 months of driver defect reports, safety inspections and routine maintenance and make them available on request;
  - iii. drivers would report promptly any defects or symptoms of defects that could prevent the safe operation of vehicles and/or trailers, and that any defects would be promptly recorded in writing;

Because of the matters listed above, the Traffic Commissioner is also concerned that you may not be of good repute, or meet the requirements of professional competence.<sup>4</sup> If you do not meet these requirements your licence is at risk.<sup>5</sup>

In addition, the Traffic Commissioner is also concerned that your nominated transport manager, **James Nigel Buchan**, may not be exercising continuous and effective management of the transport activities of the undertaking, as he must do.<sup>6</sup> If you do not have a transport manager who is professionally competent and of good repute, your licence is at risk.<sup>7</sup>

The Traffic Commissioner recommends that your nominated transport manager **James Nigel Buchan**, attends the inquiry and is prepared to give evidence as to how he meets the requirements to exercise continuous and effective management of the transport activities.

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<sup>3</sup> See section 26(1)(f) of the 1995 Act

<sup>4</sup> See section 13A(2) of the 1995 Act

<sup>5</sup> See section 27(1)(a) of the 1995 Act

<sup>6</sup> See Article 4.1(a) of EU Regulation 1071/2009

<sup>7</sup> See section 27(1)(b) and 13A(3) of the 1995 Act

## Evidence the Traffic Commissioner will consider

I attach a copy of VOSA's report which sets out the above issues in more detail. The report will form the basis of the inquiry. The Traffic Commissioner has requested that the examiner attends to give evidence at the inquiry. Other evidence which the Traffic Commissioner will consider at the public inquiry is a warning letter issued re maintenance date 5 July 2013

## The Traffic Commissioner's powers

If, at the end of the inquiry, the Traffic Commissioner is satisfied that you are and have been complying with the laws relating to goods vehicle operator licences, vehicle roadworthiness, overloading, drivers hours and tachographs, and are also complying with the conditions and undertakings you signed up to when your licence was granted, she may decide to take no further action.

If the Traffic Commissioner concludes that you are **not** so complying, or have failed to comply in the recent past, she may – according to the seriousness of what she finds –

- i) issue a **warning**;
- ii) ask you to make **new undertakings**;
- iii) **reduce the number of vehicles** you are allowed to operate ("curtailment");
- iv) **suspend your licence** for a period of time; or
- v) **revoke** it entirely.<sup>8</sup>

If the Traffic Commissioner revokes a licence, she may also **disqualify** the holders of the licence in the name of Aberdeen City Council or any of its directors for a specific period or indefinitely from holding another operator's licence, and from being a director of any council which holds such a licence. For this reason it is important that you attend the inquiry. If she suspends or curtails your licence, she may also say that your vehicles cannot be used on any other licence during the time it is suspended or curtailed.<sup>9</sup>

## What you *must* do now:

- **Confirm your attendance** using the form attached. The Traffic Commissioner is unlikely to allow a postponement, unless the circumstances are exceptional. If you do not attend, the case will be heard in your absence.
- **Start to collect your own evidence** to allow you to set out your case at the inquiry. This should include at least the following documents:
  - i. The regular safety inspection records for the last **3 months**;
  - ii. The maintenance contract(s);
  - iii. The last **3 months'** driver daily defect reports;
  - iv. Forward planner;
  - v. Evidence of training or disciplinary action received by drivers and managers;
  - vi. Anything else which you think will help show you are a compliant operator or are taking steps to address the failings identified.

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<sup>8</sup> See section 26(1) of the 1995 Act

<sup>9</sup> See section 26(6) of the 1995 Act

**You must bring this evidence with you to the public inquiry.**

- **Get legal or professional** help and representation quickly, unless you are confident you do not need it. These are serious matters. Your licence and therefore your business are at stake.
- **Make contingency arrangements** for any outcome from the inquiry, **WHICH MAY INCLUDE THE LOSS OF YOUR LICENCE.**

**Before 11 November 2014, you *must***

- If you wish, submit any written representations or evidence you want the Commissioner to see in advance.

**On the day of your public inquiry, you *must*:**

- Turn up at least 30 minutes ahead of the start time with photographic evidence of your identity – a driving licence, digital tachograph driver card or passport
- Bring with you the documentation you have assembled to help you make your case

**Who should attend**

It is important that the Chief Executive or a director of the council attends the public inquiry..

Further information, "A Guide to Public Inquiries", can be found at <https://www.gov.uk/government/publications/a-guide-to-public-inquiries>.

Please contact me if you have any questions contact details are above.

Yours faithfully

Carol Riley  
Caseworker

## Annex A

FOR THE ATTENTION OF: **Carol Riley**

Office of the Traffic Commissioner for Scotland, Level 6, The Stamp Office,  
10 Waterloo Place, Edinburgh EH1 3EG

OPERATOR: Aberdeen Council

REFERENCE NUMBER: OM0021187

I confirm that I will attend the public inquiry to be held in Employment Tribunal, Atholl House, 84-88 Guild Street, Aberdeen AB11 6LT, on Tuesday 18 November 2014 at 10:45am

The council will **not** be legally/professionally represented.

The council will be legally/professionally represented by:

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Enclosed:

- ☐ Evidence that you wish to submit in advance of the public inquiry
- ☐ Other (please stipulate)

Signed .....

Print Name.....

Position.....

Date.....