

GUIDE TO APPEARING AT A PUBLIC INQUIRY BEFORE A TRAFFIC COMMISSIONER

The prospect of appearing at a Public Inquiry is a daunting one. There are rules and procedures that can be confusing and intimidating and the consequences of attending an Inquiry without specialist advice can be serious.

The purpose of this document is to provide helpful advice to assist you in appearing before a Traffic Commissioner at an Inquiry.

GENERAL INFORMATION

A Public Inquiry is a special type of court hearing conducted by a Traffic Commissioner rather than a Judge or Bench of Magistrates. Public Inquiries are held to determine matters concerning Goods Vehicle or Passenger Service Vehicle Operator Licensing.

The Operator is usually called to attend and, often the business's Transport Manager (if they have one) will also be called up. Sometimes, drivers may also be called to attend. If you are called, you **MUST** attend, even if you have legal representation.

There are usually three reasons that Public Inquiries are held:

- To consider an application for a new Operator's Licence or a variation to an existing Operator's Licence where there are concerns that the Operator may not satisfy all the statutory requirements to hold a licence;
- To consider an application for a new Operator's Licence or a variation to an existing Operator's Licence where there are possible environmental issues;
- To consider any shortcomings of an existing Operator and to determine whether regulatory action is required.

There are **8 Traffic Areas** across England, Scotland and Wales and each Traffic Area has its own Traffic Commissioner. In addition, there are several Deputies who also hear cases.

A Public Inquiry is a fairly formal process and if unprepared can be a very uncomfortable experience. It is certainly not something an Operator should take lightly and it is always best to seek legal advice as soon as an Operator receives the calling-up letter informing him of the Public Inquiry.

Traffic Commissioners have many powers including the ability to revoke, suspend or curtail an Operator's Licence. They can also refuse to grant an application for or variation to an Operator's Licence. In addition the Traffic Commissioner has the power to disqualify an individual as a director of a company and to take away good repute/fitness and/or professional competency from an Operator and its Transport Manager if it has one.

BEFORE THE PUBLIC INQUIRY

It will depend on the type of Public Inquiry being held as to the exact procedure which will be followed.

The procedure often begins with a visit from VOSA to the Operator's premises. Sometimes, this is simply a routine visit, at other times it may be because the Operator is being specifically targeted as a result of worries over vehicle safety or general compliance.

Sometimes, the Operator or a representative will be formally interviewed under caution where there are thought to be serious issues. If you have been warned that you may be facing an interview, we would be happy to advise you and to represent you at that interview should you so wish.

Alternatively, the Vehicle Examiner may informally question the Operator or his employees. In addition the Vehicle Examiner may want to look through the Operator's records, to check that everything is in order, so it is crucial that these are readily available.

In cases involving environmental issues, the process is often started by objectors or representors raising objections to the Traffic Commissioner about the application or variation to the licence. The Operator will be informed by letter and have a chance to respond to the issues raised.

All Public Inquiries ultimately begin formally with a "calling up" letter which is sent to the Operator and any other people required to attend (for example the Transport Manager). The letter will set out the date, time and location of the hearing and the issues which are to be considered.

Unlike a regular court, the Traffic Commissioner very rarely grants adjournments. The hearings are adjourned only if there are very exceptional circumstances. If you do not attend when requested, your licence/application is likely to be refused/revoked.

If we are representing you, we will usually meet with you perhaps an hour ahead of the Inquiry to finalise matters. It is very important that you get there on time. If you get there before your Solicitor, you should inform reception that you have arrived.

AT THE PUBLIC INQUIRY

The entire Public Inquiry is recorded. It is therefore important to speak clearly when giving evidence.

What usually happens is that the Traffic Commissioner's Clerk will lead you into the courtroom and ask you to take your seat. Everyone will then wait for the Traffic Commissioner to arrive and when he or she enters the room everyone must stand. The Traffic Commissioner will tell everyone to be seated and the Public Inquiry will begin.

Usually the Clerk will make the introduction and state the matter to be considered. This will then be followed by a statement by the Traffic Commissioner concerning his/her powers and how he intends the Public Inquiry should proceed. The Traffic Commissioner will then invite the Operator's Legal Representative to raise any preliminary issues or points of law. Often this includes consideration of the Operator's financial standing but may also include other issues such as clarification of any errors.

The VOSA Representative(s) will then give their evidence usually by reading aloud any report they have prepared. Sometimes there will be a Vehicle Examiner and sometimes there will also be a Traffic Examiner but in some traffic areas it is not usual practice for either to attend. You will be told who is attending ahead of time. Following the reading of the report the Operator or his/her Legal Representative will have the opportunity to cross-examine the Vehicle and Traffic Examiners on their evidence.

If the Public Inquiry is an environmental one, there will not be a Vehicle and Traffic Examiner but instead there will be the opportunity to hear from witnesses or objectors at this stage. Similarly, the Operator or their representative can then question those witnesses or objectors.

The Operator or their Legal Representative will then have their opportunity to put their case forward. The Legal Representative will have discussed beforehand with the Operator the type of questions which they propose to ask the Operator and will assist the Operator by leading them through their evidence. Depending on the structure of the Operator's business there may be only one witness or several.

The Traffic Commissioner should be addressed as Sir/Ma'am/Madam or by their name eg. Mr/Mrs

Once the Legal Representative has put the necessary questions to the Operator, the Traffic Commissioner will have questions of his/her own. Obviously the Legal Representative has no control on the questions which the Traffic Commissioner will put to the Operator but will usually have a good idea from their experience of Public Inquiries of the type of questions which will be

asked. Therefore the Legal Representative will be able to assist the Operator in preparing to answer the Traffic Commissioner's questions. The Traffic Commissioner's questions can be extremely tough and depending on the Traffic Commissioner concerned their examination of the Operator, may be extremely probing.

Following this the Legal Representative or Operator may get to put forward a closing submission to try and persuade the Traffic Commissioner to keep any regulatory action to a minimum or to grant the licence or variation applied for.

The evidence given at a Public Inquiry often throws up a variety of technical and legal issues which need to be addressed in order to achieve the best result. The Operator needs to be fully aware of what the legal requirements of holding an Operator's Licence are and how best to comply with those requirements.

It is vital that the Operator seeks specialist legal advice as soon as they receive the calling-up letter inviting them to a Public Inquiry. This letter from the Traffic Commissioner states the issues which are to be considered at the Inquiry and a good Legal Representative can not only advise you on the law and procedure but most importantly upon the practical steps an Operator should be taking ahead of the Public Inquiry to dramatically improve their chances of success at the hearing. There is case law which requires the Traffic Commissioner to take account of the steps taken by the Operator to put their house in order ahead of the Public Inquiry. Any action already taken will be given far greater weight by the Traffic Commissioner than promises to do things in the future given at the Public Inquiry.

Public Inquiries are open to anybody who wishes to attend. This sometimes includes the Press and may include your own employees and competitors. This is another reason why it is important for the case to be handled sensitively.

AFTER THE PUBLIC INQUIRY

The Traffic Commissioner usually makes his/her decision at the Inquiry. Sometimes, they will reserve their decision pending the production of further information or simply choose to put their decision in writing rather than to announce their decision at the Inquiry.

The Traffic Commissioner will always write a letter confirming the outcome of the hearing. The level of detail of this letter will depend on whether the Operator/Transport Manager/Driver is represented. There is often complex law involved in the decision making process and any findings made by the Traffic Commissioner will refer to legislation which a Transport Lawyer can explain to you.

Frequently, the Traffic Commissioner will take a less harsh course of regulatory action in return for the Operator formally promising to take certain action (known as an undertaking). It is very important that any undertakings made to the Traffic Commissioner are complied with on time, otherwise it is likely that the Operator may have to appear at another Public Inquiry on that basis alone. Obviously, a Traffic Commissioner will take a much more firm view with Operators called to Public Inquiry on more than one occasion or as a result of a failure to comply with undertakings.

DRIVER CONDUCT HEARINGS

In addition to Operators, Drivers may also find themselves called up to Driver Conduct Hearings before the Traffic Commissioner where they may face having their HGV licence revoked or suspended. We can also assist by offering advice and representation to drivers at those hearings.

We will advise you as to our views on any decision. We can also advise you as to your right of appeal to the Transport Tribunal should this be appropriate.

We hope this Guide will give you an indication as to what you may expect to face at a Public Inquiry. You are bound to be nervous, but the Road Transport Law Team at Rothera Dowson Solicitors have considerable experience and knowledge in dealing with Public Inquiries and we will do our utmost to help you feel prepared and confident when you face the Inquiry.

For further information, please contact Anton Balkitis or Lucy Wood on 0115 9100 600.