



# A Guide to Attending Public Inquiries

Stephensons is a leading law firm which is recognised by many of the major transport trade associations. Our solicitors deal with the full range of legal matters faced by operators and drivers alike. Our clients range from independent owner/drivers to large international HGV/PCV companies and operators.

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## Stephensons

## Public Inquiries

We have a team of specialist road transport solicitors led by department head, Sean Joyce, who is a leading lawyer in the field and is ranked with the legal guide Chambers and Partners for his expertise in road transport regulatory matters. Sean has been described as:

A "brave and worldly lawyer with mountains of experience." He has expertise across a range of criminal and regulatory matters.

Our solicitors, overseen by Sean, regularly represent at proceedings before the Traffic Commissioner, including public inquiries and driver conduct hearings. Our solicitors assist clients applying for operator's licences and also those facing regulatory action.

To many, being called to a public inquiry before the Traffic Commissioner can be an extremely daunting experience that, if not properly prepared for, can have serious consequences.

The guidance below is a brief outline of the process and what to expect. Preparation is key and our specialists have experience dealing with matters before the Traffic Commissioner.

### What is a public inquiry?

Operators of heavy goods vehicles and passenger carrying vehicles are normally required to obtain an operator's licence and obey the undertakings attached to that licence. The licence system is overseen by the Traffic Commissioner for the relevant traffic area. If any concerns arise during the application for, or use of a licence, the Traffic Commissioner may call the operator to attend a public inquiry.

### Why have I been called to attend a public inquiry?

A public inquiry may be called for a number of reasons, for example maintenance shortcomings, issues over drivers' hours regulations, issues over financial standing, questions over reputation and criminal prosecutions.

Sufficient concern to call a public inquiry may arise out of a new application but, similarly, a public inquiry can be called following receipt of a report from DVSA examiners or even the police. It can be called following the reporting of any relevant convictions or fixed penalties that can impact on the issue of repute.

Being called to attend a public inquiry has serious implications for operators – the refusal to grant a licence, or the decision to revoke a licence will be fatal to most operators. Therefore the importance of seeking specialist advice and assistance cannot be overstated.

## How am I notified of a public inquiry?

The likelihood is that an operator may have an idea that a public inquiry will be called before formal notification is received. Formal notification comes in the form of a 'calling in letter'. That letter will also set out the issues which the Traffic Commissioner wants to consider at the public inquiry.

The Traffic Commissioner should also send a copy of the Traffic Commissioner's Brief which will include all documents the Traffic Commissioner will consider to be relevant to the inquiry. The contents of this will vary depending on the issues for consideration.

## What will the Traffic Commissioner want to discuss?

This will normally depend on the issues which have led to the public inquiry. For example if the issue is financial standing, the inquiry will focus on your bank accounts, overdrafts or guarantees to determine whether you have access to sufficient funds to manage your fleet. If the issue is maintenance the inquiry will focus on maintenance and testing records, systems, drivers' checks and auditing.

However, the public inquiry will not be limited in its scope and the Traffic Commissioner can investigate your operation in any way they wish. Therefore it is vital that you are fully and properly prepared before you attend.

## Who can be called to the public inquiry?

It may not be just the operator who is called to the public inquiry. The Traffic Commissioner has the discretion and indeed duty to consider the repute of a transport manager. Where a licence is revoked in a more serious case, the Transport Commissioner has the power to disqualify a director from holding or obtaining a licence. Because of this, directors, transport managers and drivers are often called to a public inquiry and each will receive a separate 'calling in letter'.

## What happens on the day?

The hearing itself can often be much more informal than a hearing that would take place in a criminal court such as the Magistrates' Court. It can be dealt with very quickly or can take all day or even longer in some rare cases.

Different Traffic Commissioners have a different approach to the hearing and the format can differ slightly depending on the sitting Traffic Commissioner however, if there is a DVSA officer present then they will be called to give evidence first. This can often be just by confirming the contents of the previously prepared and served witness statement. The DVSA officer can then be questioned by the Traffic Commissioner and even cross examined by the operator or any legal representative appearing on behalf of the operator. It is important to note that the DVSA are not acting as a prosecuting body in a public inquiry. By its nature an inquiry is a fact finding and fact assessing exercise. The DVSA is there as a party to the inquiry whose aim is to assist the Traffic Commissioner in his or her investigation of the case.

The inquiry then moves on to hearing the evidence of the operator. That can be done in the same way as the DVSA evidence if the operator has prepared a statement or it can be in a very interactive way with the Traffic Commissioner.

Documentation, often a large amount, will likely be referred to during the hearing depending on what the issues in the cases are. The operator can be asked questions on any aspect of the operation and will need to be informed about all of the issues to satisfy the Traffic Commissioner.

## What will be the outcome?

At public inquiries the Traffic Commissioner will consider whether to grant or refuse applications for operator's licences and whether to take regulatory action against licences.

1. **Formal warning** - This is the most lenient of all of the potential sanctions available to the Traffic Commissioner however, it should not be downplayed. Future breaches of any type are very likely to then result in much more serious action being taken. Formal Warnings can often be accompanied by additional requirements or conditions being imposed on any or all of the driver, transport manager or operator.
2. **Curtailment** - This involves the reduction in number of vehicles permitted for use under the licence. This can have little or massive commercial effect depending on the number of the vehicles in operation at the time of the action. If the operator needs to use the capacity of his authorised vehicle allowance for the proper running of the operation and that number is curtailed by the operator then that can have huge commercial effect on the business.
3. **Suspension** - This is where the licence is suspended, usually for a specified period. Not only does this suspend the operation of any vehicles under the licence for the period of the suspension but it also means that any vehicles specified under the licence cannot be used by any under operator or pursuant to any other operator licence during that period.
4. **Revocation** - This is the most serious of actions and will almost certainly result in the operator being put out of business.

Annual reports are published in November each year outlining how matters are dealt with before the Traffic Commissioner. During 2015-2016, 929 public inquiries were held to consider regulatory action against goods vehicle operators: 270 licences were revoked, 263 were curtailed and 114 were suspended\*.

A further 162 public inquiries considered action against bus and coach operators: 75 licences were revoked, 21 were curtailed and 15 were suspended.

Of the total 1091 public inquiries held and recorded in the 2015 – 2016 annual reports, 758 involved formal action being taken to the extent of curtailment, suspension or revocation meaning that as many as 70% of those cases resulted in action more severe than a formal warning.

**The annual reports contain a clear statement from the Traffic Commissioners:**

“Our mission is to promote safe, fair, efficient and reliable passenger and goods transport through effective and efficient licensing and regulation of the commercial vehicle industry.”

It is important that a clear and thorough approach is taken when approaching a public inquiry to ensure that the Traffic Commissioners are guided in the best possible way to assist with making a fair and proportionate decision by ruling out the possibility of making a decision which is not based on the full facts and context of the concerns leading to the inquiry being called.

# Public Inquiries

## What should I do now?

The most important fact to bear in mind is that you will be judged on the state of affairs on the date of the public inquiry. It is vital that the valuable time between receiving your calling in letter and attending the public inquiry is used effectively.

Any issues or shortcomings in your operation need to be quickly identified and rectified. Representation from a specialist solicitor and transport consultant will help you identify what needs to be done in order to maximise your chances of a positive outcome.

If you have been called to attend a public inquiry our solicitors will be happy to assist.

For more information regarding Stephensons please call **0333 344 4885** or visit **[www.stephensons.co.uk](http://www.stephensons.co.uk)**

\*Traffic commissioners' annual reports 2015 – 2016 – published November 2016

## Working with you, for you

At Stephensons our clients are real people and they live and work in the real world - which at times can be an unpredictable place. But whatever it throws at them we're never far away to help. Because we're real people too and we understand our clients needs. Our similarities mean we can work side-by-side to get the best outcome possible. It also means we can tailor our legal costs and services to lots of different circumstances. Ensuring everyone gets the representation and result they deserve for their individual circumstances. Our business is to deliver legal services that work for our clients, so you can trust our specialists to take care of things on your behalf.

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