



ROAD TRANSPORT FORUM

Financial Standing

Many transport firms are operating in a precarious financial environment, with the present financial climate continuing to challenge profitable operation. Operators face challenges and difficulties in meeting the financial standing requirements laid down by EC Regulation 1071.

An illustration is a recent case in the West Midlands where a bid for a new licence was turned down on financial grounds because the operator was the subject of an IVA. In the absence of the IVA, the Traffic Commissioner would have been satisfied in regard to financial standing.

The Upper Tribunal has laid down what can and cannot be taken into account when considering the requirement to be of appropriate financial standing. It is a continuing requirement that the operator must satisfy for the duration of the licence. The requirement to be of appropriate financial standing cannot be satisfied by evidence which simply provides a 'snapshot' of the operator's financial position. What is needed is evidence that the operator is consistently able to have enough money available for the requirement to be satisfied.

An operator is not required to have the specified amount available, 365 days per year, throughout every year that the licence is in existence. The requirement is there to ensure, amongst other things, that vehicles are promptly and properly maintained and, in particular, to enable an operator to have emergency repairs carried out, promptly and properly, in addition to normal scheduled maintenance. This is likely to mean that the amount of money available will fluctuate, depending on the size of the bills that have to be paid at any one time. What the Traffic Commissioner will want to consider is the speed with which the amount of money available recovers to a level at, or above, the amount needed to satisfy the financial standing requirement. This is why Traffic Commissioners ask for financial evidence covering a period, normally of three months, and then consider the average figure over the whole period.

The financial standing requirement can only be met by assets which are available, or can be made available, to pay bills, as and when they fall due. If the money can be used within 30 days or less, then it is likely to be available to pay bills as and when they fall due. If a longer period is needed before it can be used, it is unlikely to be available to pay bills as and when they fall due. In the case of an overdraft or credit card, the amount available will not be the full amount of the overdraft or the credit card limit, instead it will be the amount which can still be drawn or used.

The requirement can only be met by assets, in whatever form, which are owned by the operator. Bank accounts, for example, must be in the name of the operator. Overdrafts and credit cards must also be in the name of the operator. Similar considerations apply to any other form of asset advanced as a way of proving appropriate financial standing. The only exceptions are Statutory Declarations (which do not apply where the operator is a limited company) and Invoice Finance agreements.

It is essential to distinguish between 'working assets' and 'surplus assets'. Working assets are those used to enable the business to function and earn money. Surplus assets are those that are not needed for that purpose. It is difficult to envisage any circumstances in which a Traffic Commissioner will be prepared to take into account the value of working assets when deciding whether or not appropriate financial standing has been proved. The sale of a working asset, coupled with the use of the money to pay bills, is likely to reduce the ability of the business to earn money, which will, in due course, increase the time taken to restore the finances of the business to the level required to meet the requirement to be of appropriate financial standing. The sale of a surplus asset does not have the same consequences.

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Financial Standing [continued]

Operators who put forward the value of a physical asset, in order to meet the requirement of appropriate financial standing, will need to satisfy the Traffic Commissioner that the asset in question is readily saleable and that the net sale proceeds will probably be available to be spent within 30 days of the decision to sell.

The Senior Traffic Commissioner has recently made it plain that whilst the requirement of financial standing is mandatory, Traffic Commissioners are as flexible as possible in determining financial standing. However, the rules are there for a reason and having sufficient resources for the safe operation of the fleet is not negotiable.

Jared Dunbar of Dyne Solicitors says that what is key is that an Operator has available capital and reserves of the amount required for the licence. In calculating the 'average balance', it appears that different Traffic Commissioner's Offices may be applying slightly different methods. The reason being that the statutory guidance only makes it clear how the average for financial standing for new applications should be calculated and not how to calculate it for existing licence holders. With physical assets, operators may be required to provide an independent market valuation for the item but also demonstrate that it can be sold quickly enough. The current statutory guidance on financial standing is under review by the senior traffic commissioner, with the new guidance likely to be released before the end of the year.

Loss of Regional Traffic Commissioners?

The Local Transport Act 2008 (Commencement No.3) Order 2013 which was made on 21 March looks like the beginning of the end for regional Traffic Commissioners and the resurrection of the idea of a single England and Wales Traffic Area. The effect of the Order enables the Secretary of State for Transport to abolish the requirement for a single Traffic Commissioner for each Traffic Area and to appoint such numbers of Traffic Commissioners for England and Wales which are considered appropriate. A single Scottish Traffic Commissioner will remain. Traffic Commissioners in England and Wales will be granted full jurisdiction in respect of their statutory functions throughout England and Wales and also in relation to reserved matters in the Scottish Traffic Area. The Scottish Traffic Commissioner will be given full jurisdiction in respect of all statutory functions in the Scottish Traffic Area and also in relation to reserved matters in England and Wales.

The Order also enables the Senior Traffic Commissioner to require Traffic Commissioners, and their Deputies, in England and Wales to vary out their functions at any place within that jurisdiction and also to carry out reserved functions in Scotland. The Senior Traffic Commissioner will also be able to deploy the Scottish Traffic Commissioner, and Scottish Deputy Traffic Commissioners, to carry out reserved functions in any place in England and Wales.

It enables the Secretary of State to appoint such number of Deputy Traffic Commissioners in England and Wales as he sees fit. It also enables him to appoint Acting Traffic Commissioners when the post of any Traffic Commissioner in England and Wales becomes vacant pending the appointment of a new Traffic Commissioner.

On the commencement of the Order, said to be "the day after the day on which the Secretary of State first makes an order under Section 6 of the Act (consequential amendments), existing regional Traffic Commissioners and Deputy Traffic Commissioner will become Traffic Commissioners and Deputy Traffic Commissioners for England and Wales.

Jared Dunbar says he is interested what the motivation behind this legislation is. Is this a move to attempt to standardise things across the regions? Or is it the ability to save costs by reducing the number of Traffic Commissioners? Or does it allow the Traffic Commissioners to redeploy resources where they are needed more easily?

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