

**IN THE SCOTTISH TRAFFIC AREA**



**DECISION OF THE TRAFFIC COMMISSIONER FOR SCOTLAND**

**Goods Vehicles (Licensing of Operators) Act 1995**

In the matter of

**George James Stewart & Alan George Stewart t/a RW Stewart  
OM0035386**

**and**

**RW Stewart Haulage Limited  
Application OM2061363**

**Conjoined with driver conduct hearings in respect of:**

**Driver Blair, Driver Rankine; Driver Beedie; Driver Steel; Driver Duffy; Driver Robertson; Driver Kerr; Driver Miller; Driver Clark; Driver Stirling; Driver Richard Stewart; Driver Sandy Stewart; Driver Alan Stewart; Driver Corrie; Driver Rintoul; Driver McGurty; Driver Prentice; Driver Graham; Driver MacDougall, Driver Robb and Driver Espie**

**Public Inquiry and conduct hearings held at Edinburgh on 20, 21 and 22  
March and 30 and 31 May 2023**

**DECISION**

- a. Pursuant to an adverse finding in terms of Sections 26(1)(a), 26(1)(c)(iii), 26(1)(ca), 26(1)(e), 26(1)(f) and 27(1)(a), of the Good Vehicles (Licensing of Operators) Act 1995 (the 1995 Act) operator's licence OM0035386 is revoked with effect from 23:59 on 11 August 2023.
- b. The repute of the partnership of George James Stewart & Alan George Stewart t/a RW Stewart and Mr Alan Stewart is lost.
- c. Application OM2061363 RW Stewart Haulage Limited is granted as applied for with effect from 23:59 on 10 August 2023.

## **Background**

1. The partnership of George James Stewart & Alan George Stewart t/a RW Stewart (OM0035386) (hereinafter 'the operator') holds a standard national goods operator's licence authorising the use of 20 vehicles and 22 trailers. The licence has been in force since 1997.
2. The former TM was Mr George Stewart who was also one of the partners until his death in 2021. I directed, pursuant to Regulation 31 of the 1995 Regulations, that Mr Alan Stewart be treated as the holder of the licence carrying on the operator partnership's business pending conclusion of an ongoing DVSA investigation. A new application by RW Stewart Haulage Limited was also submitted, the intention being to carry on the business as a limited company. I directed that consideration of that application be undertaken as part of the inquiry.
3. A report was submitted to my office by Traffic Examiner (TE) Wardrop. It was alleged, amongst other things, that several of the operator's drivers had been creating false records and driving its vehicles without driver cards inserted. It was also alleged that the operator's system for monitoring drivers' hours was insufficient. DVSA were concerned that Mr Alan Stewart was complicit in the unlawful use of another driver's driver card. I was also advised that the operator's mechanical and driver's hours prohibition rates were above the national average and that one of the operator's vehicles had been involved in serious accident, colliding with a house, resulting in all 39 cattle in transit being euthanised.
4. This was the operator's first public inquiry.

## **The Public Inquiry**

5. The public inquiry called before me over the course of five days in Edinburgh. Mr Alan Stewart, in his capacities as a former partner of the operator and the person carrying on the operator's business and as sole director of the new applicant company, were represented by Mr Kelly, Solicitor. Mr Saad, counsel, represented DVSA. Mr Docherty, solicitor, appeared on behalf of Drivers Gordon Espie, Sandy Stewart, Donna Clark, Richard Stewart, Gary Stirling and Graeme Prentice.
6. Mr Sadd rightly highlighted at the outset that his role was to assist the inquiry rather than to adopt a prosecutorial approach to proceedings. I am extremely grateful to all counsel for their assistance, not least for their efforts in marshalling the significant volumes of evidence before me.
7. DVSA produced a 'master table' of all the alleged drivers' hours offences which was circulated to parties in advance of the inquiry. That document was of considerable assistance in an inquiry focussed on such a large scale

investigation. It neatly set out the detail of what was alleged, ensuring that the operator and all drivers were given fair notice of the allegations facing them.

8. Significant volumes of evidence were also produced by the operator for the inquiry. Both DVSA and the operator lodged additional items of documentary evidence in the course of the inquiry. It is unnecessary to list all of that here but I had regard to all evidence before me in reaching my decision.
9. Shortly after the conclusion of the inquiry, Mr Kelly intimated that Sandy Stewart and Callum Stewart had been appointed as directors of the applicant company RW Stewart Haulage Ltd.

### **Evidence**

10. I heard evidence at inquiry from: TE Wardrop; Mr Alan Stewart; Mr Conor MacGuire; Driver Prentice; Driver Graham; Driver Rankine; Driver Beedie; Driver Steel; Driver Duffy; Driver Robertson; Driver Kerr; Driver Miller; Driver Clark; Driver Stirling; Driver Richard Stewart; Driver Sandy Stewart; Driver Corrie; Driver Rintoul; Driver McGurty; Driver MacDougall, Driver Blair; Driver Robb and Driver Espie.
11. Given the volume of evidence heard over the course of the inquiry it has been necessary to summarise and focus on the most salient points for the purposes of this decision. I have, however, taken time to consider the evidence I heard in detail and have taken account of all of it in reaching my decision.

### **TE Wardrop**

12. In his evidence, TE Wardrop referred to his extensive report and the addenda which he had prepared in advance of the inquiry. Those documents are held as incorporated herein. Put shortly, in February 2020 he had been involved in a roadside stop of one of the operator's vehicles. It was identified that the driver, Driver Robb, had likely used the driver card of another driver, Driver McGurty.
13. TE Wardrop undertook to investigate, but his inquiries were delayed by COVID. He requested data from the operator meantime and the data received disclosed that Driver McGurty's card had been used by another of the operator's drivers, Driver Espie. Driver McGurty's card appeared to have been used by Driver Espie and Driver Robb during the period November 2019 – February 2020. Driver McGurty was a former employee of the operator, his employment having terminated in 2018. As a result of the concerns identified, TE Wardrop began a full investigation into the operator's transport operation.
14. TE Wardrop's investigation concluded in November 2021. He had interviewed several of the operator's drivers and one of the partners, Mr Alan Stewart. Despite requesting data for all of the 54 drivers who had driven for the operator over the relevant periods, data was never provided for 14 of them. He analysed data over three periods between December 2019 and November 2020 and

initially identified 40 false records, 10 instances of driving with no card, and several hundred instances of failing to record duty time.

15. His findings led him to conclude that the operator did not have proper systems for managing drivers' hours. Scheduling was poor and that was a serious difficulty for an operator carrying livestock. Card and vehicle units were not being downloaded as required and there was no system for identifying missing mileage.
16. The system for checking and retaining driving licence information was also insufficient and that was a serious concern given the operator used casual drivers. The system failings had undoubtedly led to the large number of driver's hours offences which had been identified going unnoticed and a driver without a valid CPC being allowed to drive. It was also identified that some of the operator's vehicles were not always being parked at the operating centre.
17. TE Wardrop noted that the transport manager was elderly and had recently taken seriously ill. He was unable to be interviewed but it was apparent that he had not been exercising continuous and effective management of the transport operations for some considerable time. TE Wardrop was also concerned that the partner who was overseeing the transport operation day to day, Mr Alan Stewart, was aware that his drivers had been using Driver McGurty's card. He believed that he also may have been complicit in that.
18. TE Wardrop had reached that conclusion as a result of a number of factors. Firstly, Driver Espie and Mr Stewart had both advised during interview that Driver McGurty's card had been given to Mr Stewart following the roadside stop in February 2020. When asked at interview (in November 2021) what he had done with Driver McGurty's card when it was given to him in February 2020, Mr Stewart had said that he had cut it up.
19. TE Wardrop's analysis, however, identified that Driver McGurty's card had been used again on 23 June 2020 in one of the operator's vehicles – J500. That vehicle was driven by Driver MacDougall immediately after the use of Driver McGurty's card on that day. Mr Stewart must not, therefore, have destroyed the card as he had stated and it followed that he was highly likely to have known of, and condoned its use, by Driver MacDougall.
20. Secondly, early in TE Wardrop's investigation (March 2020) one of the operator's employees, Donna Clark, had said that Mr McGurty had done little bits of work for them here and there since he left their full-time employment in 2018. They could not, however, evidence that with invoices. That evidence was at odds of that of Driver McGurty, who had told TE Wardrop at his interview in October 2020, that he had not driven for, seen, or spoken to the operator since 2018. TE Wardrop concluded that operator was trying to hide the fact that other drivers were using Driver McGurty's card by saying he was still doing work for them.

21. In advance of the inquiry, and in response to the concerns set out by TE Wardrop regarding the use of Driver McGurty's card, Mr Stewart provided a screen print of a text exchange which purported to have taken place between Driver McGurty and Mr Stewart on 22 and 23 June 2020.
22. The exchange indicated that Driver McGurty was looking for a lift from the operator's yard to his home in Carlisle in one of the operator's lorries. It also disclosed that he had offered to drive down to Carlisle, and that someone called 'Bobby' was picking him up from the airport. On 23<sup>rd</sup> June Mr Stewart sent a text to Driver McGurty which said "in the middle drawer of J500" to which Driver McGurty responded "ok" followed by a thumbs up.
23. Having received that evidence, TE Wardrop interviewed Driver McGurty again to allow him to comment on it. Driver McGurty maintained his position that he had not driven for the operator since 2018. TE Wardrop asked to see the text exchange on Driver McGurty's phone and noted that several of the text messages shown on the screen shot taken from Mr Stewart's phone were missing. Driver McGurty denied trying to conceal evidence which contradicted his earlier statement, instead stating that his phone was broken. He conceded, however, that the messages shown on Mr Stewart's phone were an accurate and complete reflection of the text exchange they had on those dates.
24. Driver McGurty stated that he did not know what "in the centre drawer of J500" meant. He was driving when he received it and just sent a text message back saying "ok" with a thumbs up. He stated that in response Mr Stewart had called him and told him that the message wasn't for him. Driver McGurty stated that he knew what Mr Stewart was like and that he was "trying to worm his way out".
25. Driver McGurty thereafter admitted that he had asked for a lift but denied that he had driven the lorry on 23 June 2020. He alleged that Mr Stewart had phoned him and asked him to lie that he had driven for the operator as a favour. He denied that his old card had been returned to him. TE Wardrop advised that he did not ask Mr McGurty why he had advised in October 2020 that he had not seen or spoken to Mr Stewart since 2018.
26. TE Wardrop advised that he considered the additional evidence carefully and concluded that Driver McGurty's position was credible. He considered the message regarding the 'centre drawer of J500' could have been meant for someone else. He would have expected to see additional messages explaining what it meant had it really been meant for Driver McGurty.
27. He accepted Driver McGurty's evidence that there had been no phone call prior to the message explaining what it meant and still considered it likely that Mr Stewart had deliberately given the card to Mr MacDougall in order that he could use it on his run on 23 June 2020. The full transcript of Driver McGurty's second interview, and TE Wardrop's comments thereupon, are included in TE Wardrop's second additional statement as incorporated herein.

28. TE Wardrop concluded his evidence by advising that he continued to have concerns in relation to Mr Stewart's involvement with the illegal use of Driver McGurty's card. He was also concerned that he had not been truthful with him in the course of his investigation. Mr Stewart's attitude at interview had been poor and despite the delay which arose as a result of COVID, there had been little improvement in the operator's systems between the roadside check and his visits as part of the investigation.
29. As the partner (in the absence of his father and transport manager) in charge, Mr Stewart was responsible for the transport operation. Not only had there been no proper systems in place, allowing widespread offending on the part of the drivers, he had not taken the opportunity to implement improvements when failings were first identified. Drivers had not been disciplined when they ought to have been. Drivers' hours offences had also been identified on his own part which showed that he was not setting the right example as an operator. Notwithstanding the additional evidence that he had heard from Driver McGurty at inquiry, his view in relation to the allegations remained the same.
30. TE Wardrop acknowledged under cross examination that the audit report carried out by Scott Robison indicated that there had been significant improvements in the operator's compliance.

#### **Driver Blair**

31. Driver Blair had been the driver of the vehicle involved in the serious accident whilst driving one of the operator's vehicles on 16 September 2021. His lights caught a parked car at the side of the road and he jerked the wheel as a result of inexperience. He had only had his class 1 licence for around 12 weeks. He had been driving class 2 for a lot longer though. The lorry collided with a house and all cattle in transit ended up having to be euthanised.
32. It was serious accident and he had lost sleep over it. He had done extra training and had not had any accidents after that.

#### **Driver Rankine**

33. It was alleged that Driver Rankine had used the mode switch incorrectly. TE Wardrop had also identified four daily rest offences on his part and some failures to record other work. Driver Rankine's position was that the incorrect use of the mode switch had been as a result of ignorance on his part. He was not a livestock driver by vocation, he was a plant mechanic. He had done some more driving during COVID, but was not using his entitlement now.
34. Driver Rankine advised that neither Alan Stewart or the transport manager had made him aware he had to record other work. He knew now though and would know for the future. He was never spoken to by anyone about infringements and thought it was ok working for the operator.

### **Driver Beedie**

35. It was alleged that Driver Beedie had driven without a card and had committed minor, infrequent, daily rest offences. He denied driving without a card under explanation that another driver had turned up to rescue him when he ran out of time. The other driver didn't have a card, but he had made a print out. He had called the yard and spoken to Sandy Stewart about it at the time.
36. At inquiry, he produced print outs and his diary to cover some of the alleged offence periods. He accepted that he should have produced them during interview but stated that he did not have a chance. He had his own operator licence and drove according to the law. He admitted keeping his lorry at his house at weekends whilst he was driving for the operator.

### **Driver Steel**

37. Driver Steel was alleged to have driven without the correct CPC. He admitted that immediately but denied having done so deliberately. He had sat the theory test but there was a practical part he had missed out and hadn't completed. Alan Stewart had loaned him equipment and he drove as a return favour. Alan Stewart hadn't checked his entitlement but had trusted him. He would not have driven if he knew he was unable to do so. He was not using his vocational entitlement at present.

### **Driver Duffy**

38. Driver Duffy was alleged to have driven for a lengthy period (52 minutes) without a card. He denied that at first, stating that another driver must have driven, but when it was put to him that the period of driving off card happened instantly following the removal of his card he said that he 'held his hands up'.
39. He had left Stewart's but was back with them now. He had never been spoken to about infringements before, but when he came back everything had changed. His card was downloaded regularly and he had been sat down and spoken to about recording other work etc. He liked working for Stewarts – they treated him like family.

### **Driver Prentice**

40. I agreed to hear Driver Prentice's evidence in private session.

### **Driver Robertson**

41. It was alleged that Driver Robertson had committed drivers' hours offences but had also driven without a card inserted. Driver Robertson admitted those offences. He explained that the driving off card had been minimal, just a minute to move away from a gate. He would not do anything like that again. He flatly denied ever driving using Alan Stewart's card. Alan Stewart had never asked him to bend the rules or break the law.

### **Driver Kerr**

42. It was alleged that Driver Kerr had committed a number of rest offences and had driven with no card. Driver Kerr advised that he did not deny the offending but he couldn't remember much detail as it was some time ago. He thought that it was better to take his card out and then make a print out but he admitted that he had not done so. He knew better now but admitted driving off card as alleged.
43. He was with another employer now. He wasn't as pushed and was not committing offences. His hours were being closely monitored.

### **Driver Miller**

44. It was alleged that Driver Miller had committed some rest and daily driving offences, and that he had also driven with no card on two occasions. He had not attended interview despite being invited. He advised that he had not been able to attend but even if he had attended he would have answered every question with no comment.
45. Driver Miller didn't work for Stewarts anymore but had enjoyed his time working there. He could not remember one of the occasions of driving off card, but the other was for one minute moving away from a gate. He should have made a print out but didn't.

### **Driver Clark**

46. Driver Donna Clark had worked for RW Stewart for around ten years. She did admin and on occasion some driving. It was alleged that she had failed to record other work on 92 occasions over the reference periods. That had led to 3 occasions where she had not had sufficient daily rest. Her driving was largely confined to rescue journeys when other drivers ran out of time.
47. Driver Clark advised that she did not know she had to record her admin work. She thought as long as her card was inserted it was fine. She had never driven without her card and thought she was doing the right thing. Since TE Wardrop's investigation, she had vastly improved her skills – she had undertaken CPC and contacted the RHA with questions. She was now a trainer and passed on everything she had learned to the other drivers.
48. Driver Clark advised that it was like night and day now at Stewarts. Infringements were being checked and things were being done properly. The scheduling was much better and she was needed less often for rescue journeys, but she still did that work on occasion. She wanted to apologise for the errors she had made.
49. Asked why she had sent an email advising that Driver McGurty did a bit of work for the operator in March 2020, Driver Clark advised that she did see Mr McGurty around the yard on occasion. He had stopped working full time for



Stewarts in 2018, but he came in looking for a lift down the road on occasion after that. He would also ask if he could park in the yard.

50. Knowing how things worked, she thought it likely that in return he had been asked as a favour to take the odd load down to Carlisle as he was going anyway or to deliver to a farm. They didn't have invoices for that work, but she was sure that Driver McGurty had done the odd thing for them on occasion. She had asked Alan Stewart what to say in the email because she knew Driver McGurty had not been paid.
51. When Driver McGurty's card had been given to Mr Stewart in February 2020, he had asked her to download it. She did that and gave it back to Mr Stewart. She thought it had been destroyed. She didn't know how Mr Stewart had got the card and she couldn't remember if it was before or after TE Wardrop had visited that she was given it.

### **Driver Stirling**

52. It was alleged that Driver Stirling had committed daily rest and driving offences and had also used the mode switch on the tachograph head inappropriately. He did not attend interview under explanation that he had moved house. He accepted that he had committed all the infringements that were alleged.
53. He knew that on the day he failed to record other work he had a puncture, but he couldn't remember the detail of the other offences. He had been careless and naïve but he had not deliberately used the mode switch to conceal offences. He had held his HGV entitlement since 2018 but had little training on tachographs. He had sorted that now. He was very sorry and regretted his lack of knowledge, realising that it had led to offending. Being a livestock driver was a challenging job. He still worked for Stewarts. It was like a family.

### **Driver Richard Stewart**

54. It was alleged that Driver Richard Stewart had committed five daily rest offences and failed to properly record other work on ten occasions. Driver Stewart was a member of the Stewart family - he was Alan Stewart's cousin. He still drove for the operator and had held his HGV entitlement for around 29 years. He accepted that he had failed to record other work on the occasions alleged but did so because he did not know he had to record his time going back to the yard.
55. When it was put to him that he had accepted that he had deliberately failed to record other work to conceal offences at interview he advised that he must have been confused. He was under a great deal of pressure at the time and remained clear that he had not failed to record other work deliberately. He had had no guidance on recording other work from the operator or transport manager.
56. Things were much better now at Stewarts. He had had training and everything was recorded properly. Livestock driving was different from other work and

rescue journeys had been frequent in the past. Now they were much less frequent and the scheduling was better.

### **Driver Alexander (Sandy) Stewart**

57. It was alleged that Driver Sandy Stewart had failed to record other work on 46 occasions. One instance of taking insufficient daily rest had been identified as a result. Driver Stewart was now the main planner for the operator but his role had changed since the DVSA investigation. He was Mr Alan Stewart's nephew and he had previously worked as a driver for the operator.
58. He had suffered an injury to his arm and had started taking more office responsibility after Alan Stewart had split up with his wife. He rarely drove now. He worked closely with Alan Stewart every day in planning and scheduling the work.
59. He admitted that he had failed to properly record other work but advised that he had done so unintentionally. He fully accepted that he should have known and had made sure he was properly aware of the rules now. He apologised for his shortcomings.
60. He confirmed that Driver Beedie had contacted him and was concerned when his relief driver had turned up to rescue him without a driver card. Under cross examination, he explained how the operator's regular journeys worked, including what could sometimes be a more problematic runs scheduling wise down south. The routes could be driven easily within time though. He explained the peculiarities of livestock haulage and the balance between ensuring animal welfare and drivers' hours compliance.
61. Things were very different to what they used to be. They had less work and ran fewer lorries. There was a bank of tacho heads in the office and everyone who might drive put their cards in in the morning to record other work. That way, if they did have to go out and drive, it was all properly recorded. There was now little room for mistakes.
62. One further offence was identified during the adjournment period on the part of Mr Stewart. That had been a stupid mistake on his part and had happened as a result of them being short of drivers. He had, however, taken print outs.

### **Driver Corrie**

63. Driver Corrie was alleged to have committed a range of rest offences and to have knowingly made a false record on 28 occasions. On some occasions he was alleged to have pulled his card and others to have used his partner, Gillian Graham's, card.
64. Driver Corrie advised that his entitlement expired in two months and he did not intend to renew it. He admitted all the offences with the exception of using Driver Graham's card, which he denied. Driver Graham had always been in the cab

when her card had been in use. He had been a vocational driver for 29 years and had suffered greatly during that time.

### **Driver Graham**

65. Driver Graham was alleged to have loaned her card to Driver Corrie on five occasions. She denied that she had. She was a full time livestock driver elsewhere and had her card on her at all times. She had done some work for Stewarts from which she had been paid. She had provided that evidence to TE Wardrop after his second letter asking but could not explain why he had never received that. She had not thought to bring it with her to inquiry.

### **Driver Rintoul**

66. It was alleged that Driver Rintoul had committed a few more minor drivers' hours infringements and also that he had failed to properly make a record of other work on one occasion. Driver Rintoul didn't remember the circumstances surrounding the alleged infringements so could not confirm or deny them. He had worked for Stewarts but now worked for another operator.
67. He confirmed, however, that he was the 'Bobby' who was referred to in the text exchange between Mr Stewart and Driver McGurty. He had picked Driver McGurty up from the airport on the 23 June 2020 around 10.30 - 11.00 pm. He had flown in from Ireland and was looking for a lift down the road to Carlisle in one of Stewart's lorries. Driver Rintoul had agreed to pick him up and take him to the yard. He only lived a few minutes away from the yard.
68. Driver Rintoul advised that he dropped Driver MCGurty at Alan Stewart's yard in time for him to get a lift down home in a pig lorry going to Malton. The lorry usually left about midnight. He didn't remember Mr McGurty taking any phone calls when he was in the car with him and he did not recall being told whether Mr McGurty was to be driving the lorry or travelling as a passenger.

### **Driver McGurty**

69. It was not alleged that Driver McGurty had committed any driving offences whilst working for the operator. He was called to a hearing on the grounds of the allegations that his card had been used by other drivers.
70. Driver McGurty advised that he had lost his driver card around the time he left Stewarts in 2018. He couldn't remember how he had lost it, he just had. Come to think of it he may have left it in a lorry – he had cleared out his stuff so quickly. He had applied for another one soon after. He left Stewart's following a disagreement with Sandy Stewart. He felt he was treated badly compared to other drivers.
71. He was aware that others had been using his card. Alan Stewart had phoned him and asked him to cover for him. He couldn't remember when that had happened but he had been on a boat to Ireland at the time.

72. He was flying back from Dublin to Glasgow and had asked Alan Stewart if he could get a lift home to Longtown in a lorry. He knew there was a pig lorry going to Malton every night. Driver Rintoul had picked him up at the airport. He got in the passenger side of the lorry. Driver MacDougall was driving and he got him to drop him off at the mart in Longtown which was five minutes walk from his house. He couldn't explain why certain texts were missing from his phone as compared to Mr Stewart's. He had a new phone now.
73. He accepted that the text exchange was correct but maintained he did not know what 'in the centre drawer of J500' meant. He had just replied ok as he was busy, he was unable to provide any vouching for his assertion that Alan Stewart had phoned him to say the message had been sent to him mistakenly. He didn't drive that night and he didn't know his card was being used.
74. Under cross examination Driver McGurty advised that he had turned up at the yard and got into the lorry. Driver McDougall was already in it. They had waited a few minutes – maybe 10 or 15 - before they left. Driver MacDougall must have been doing something. He accepted that he had admitted a driving offence in his earlier evidence – driving whilst texting.
75. He was sure he was in Hindes yard in Ireland when he was texting. According to the screen shot of messages that would have been around 22:13 hours. He could not explain how he could have been in Ireland at 22:13 yet have made it to Glasgow for 23:00. He acknowledged that it was probably a 'bit tight' time wise.

### **Driver MacDougall**

76. It was alleged that Driver MacDougall had committed a significant number of drivers hours offences, the most serious of which were five instances of driving without a card. Driver MacDougall admitted the offending, under explanation that the driving off card instances were due to ferry movements and bad weather. They were mistakes due to a lack of experience, not deliberate attempts to deceive.
77. Driver MacDougall explained that he had turned up at the yard to drive close to midnight on the 23 June 2020. The pig lorry left at midnight and he always left it late to arrive. When he arrived, Driver McGurty was in the canteen and he wasn't sure who was to drive the lorry down. He had asked Sandy Stewart, but he said that Driver McGurty had spoken to Alan Stewart about it.
78. He advised that Driver McGurty drove the lorry down to Longtown. As he initially remembered it he thought he had gone to Driver McGurty's house, but later accepted that they would not have done that with a load of pigs on. They must have stopped at the mart. They had stopped at services on the way down too and the CCTV would clearly have shown it was driver McGurty driving, not him. He had told TE Wardrop about that when he was interviewed but it had never been checked out.

79. He had not touched Driver McGurty's card and had not used it. He did not see Driver McGurty putting his card in but he had arrived at the yard with minutes to spare, certainly not the 43 minutes prior to leaving that Driver McGurty's card had been in the tachograph. He had no reason to use anyone else's card – his work was planned that day and he had more than enough time to do it all within his hours.

### **Driver Espie**

80. It was alleged that Driver Espie had knowingly made a false record by using Driver McGurty's card on four occasions. He admitted that he had done so, under explanation that he had used it to extend his hours. His wife was suffering from cancer and he needed to get back up the road rather than wait for rescue.
81. He had found the card in the truck about a month after Driver McGurty had left and stuck in it the middle drawer. He had meant to give it back to Driver McGurty but forgot. He came across it again about a year later and used it as alleged. Alan Stewart had taken it off him but he could not remember exactly when that was. He did not know how Driver Robb had got the card.
82. Alan Stewart had pulled him in and explained how disappointed he was in him Mr Kelly intimated. The office must have downloaded the vehicle units and spotted it. There wasn't a culture of breaking the rules - he had done what he had done for a reason and he was here to face the consequences. Alan Stewart had given him a written warning.
83. Working at Stewarts was like being part of a family. Alan Stewart also never skipped on maintenance which was good for everyone. He accepted that he had been parking the lorry away from the operating centre. Alan Stewart had let him do that to help him out.

### **Driver Robb**

84. It was alleged that Driver Robb had made a false record by using Driver McGurty's card on one occasion. He admitted to using the card once at the end of his shift. His wife didn't keep well and he was trying to get home earlier. He couldn't remember how he had got it or what he had done with the card after he had used it.
85. Alan Stewart had not given him the card nor did he know that he intended to use it. Alan Stewart had spoken to him and thought that must have been around the time TE Wardrop had found that he had used the card. He felt that Alan Stewart didn't know what to do with him and Driver Espie. He was really angry with them.

### **Mr Alan Stewart**

86. Mr Alan Stewart told me about the history of the family business. They were the biggest livestock haulier in Scotland. They had eventually moved to Drum Farm,

the main operating centre, in 2007. There were specialist resting facilities for livestock also at that site and they were the only UK business to have such a facility. Their customers included large supermarkets and there were strict animal welfare requirements imposed as a result of regulations and customer standards which had to be met.

87. They currently had 11 lorries and 15 trailers on the road. It had been more in the past before COVID but he had become scunnered after the incident involving Liam Blair. They had cut back what they were doing thereafter. They did less multi drop work now and relied more on sub contractors. His nephews Sandy and Callum, his wife Marriane and his son Rory all worked with him in the business.
88. His dad, former partner and transport manager for the operator, had passed away in December 2021. He had been well up until six months before he died and would have taken it hard had he been asked to step aside for another transport manager. Looking back however, he should have got Conor Maguire in a long time ago.
89. 2019/2020 had been an extremely difficult year. His father was very experienced in the industry but given his age his skills and knowledge as a transport manager were not what they once were. His father was also self-isolating due to COVID. His ex-wife, Fiona, dealt with the management of drivers' hours. She left the business in 2018 and since then he had really been taking the whole burden of everything on his shoulders.
90. The business didn't use agency drivers but they had used casual drivers – friends of friends and the likes. He admitted that they did not know, and did not check, whether those drivers had entitlements to drive. They took it on trust. He acknowledged that Jason Steel drove his vehicles without the correct entitlement.
91. They ran a relatively new fleet and had recently placed an order for another five new trailers. They had no plans to expand again, but he liked to keep the fleet in good order as it caused fewer problems. There had been issues with overloading in the past but the drivers were all given training. They now had a load plan and larger trailers meant that it was almost impossible for them, to be overloaded.
92. In relation to the accident involving Liam Blair, Mr Stewart advised that they had trained him and put him through his Class 1. He had come recommended from another haulier and he had spent many months training with Stewarts in smaller lorries. They had lost all of the cattle. It had cost the business just short of £1m and insurance costs went through the roof. It had almost been enough to make Mr Stewart want to give up.
93. Mr Stewart flatly denied that he knew that his drivers were using Driver McGurty's card. He accepted that he should have done, had he had proper

systems in place to identify that. After Fiona left, Donna had been kind of pushed into it. It was too much for her.

94. They had tachomaster in place but no one really knew how to use it so drivers' hours were not getting checked as they should have been. It was not wilful ignorance, just wrongly prioritising other matters ahead of compliance. He did not expect TE Wardrop's investigation to highlight as many shortcomings. He couldn't believe that Driver Steel did not have the correct entitlements - he was honest as the day is long – but he accepted that there had been no proper checks on the drivers who were working for him. It was different now - there was a proper checking process and interview system. His vehicles now had trackers.
95. Mr Stewart accepted that he had already had a warning from me in 2019 for parking vehicles away from the operating centre which he had not heeded. Despite that, he had continued to allow some drivers to take the vehicles home or to park elsewhere. He wanted to help them and was scared he would lose them otherwise. He accepted, when Mr Kelly put it to him, that he had prioritised himself, his business and his drivers, over the licence undertakings. His explanation was that it was difficult to get staff. The vehicles were now where they were meant to be and staff better trained.
96. Neither Mr Espie nor Mr Robb had come to him to advise that they had personal difficulties. Had they done so, he would have done what he could to help. Three drivers – Mr Robb, Mr Espie and Mr Reece had been handing the card about between them. He had asked Mr Reece to leave. Mr Reece had no respect, was always breaking the rules. He was best friends with Mr McGurty.
97. Driver McGurty had driven for him until around 2018. He knew he had fallen out with Sandy Stewart, but he didn't know much about that. He advised that after TE Wardrop had found Driver McGurty's card was being used, he took it off Driver Espie and kept it. The night of 23 June, he loaded the pigs and put Mr McGurty's card in the centre drawer of J500. The text exchange was him telling Driver McGurty where to find it. It was his property and he wanted to give it back to him. In hindsight, he knew he should have given it straight to DVLA. He admitted that he had lied to TE Wardrop in interview about cutting the card up. He had been under a lot of pressure.
98. Driver MacDougall had told him that driver McGurty had driven down to Longtown and he believed him. There was absolutely no reason why Driver MacDougall would have had to use Driver McGurty's card. He had plenty of time. He had also trusted Driver Espie and Driver Robb. He had known Driver Espie for over 20 years. This experience had taught him he could not trust anyone. He hadn't dismissed them on the spot because they had worked for him for so long.
99. As regards the widespread failure amongst his drivers to fail to record other work that TE Wardrop had identified, he considered that they were just being

lazy. He had done it himself. They paid for training for all of the drivers and he would have expected that to be covered there.

100. Scheduling was much better now and they relied much more on sub-contractors rather than trying to cram everything in. Rescue journeys were less frequent. Conor Maguire had made a huge difference to compliance. He came in about 18 months before and made sure everything was 100%. They had now instructed GRT to carry out audits as they wanted to check that things were being done properly. He would be happy to undertake to have further audits in the future and was confident his systems were working well.
101. Looking back to 2020 was hard. It had been such a bad year. They had a good business and his dad was all for him expanding. His dad wanted to make it to the 100 year anniversary. He made him a promise they would. He had lost several family members since then and had suffered greatly during his separation from his wife. He was in a dreadful place back then.
102. He now made sure, as a driver, that he recorded his other work. He used his vocational licence to go out and feed the animals once or twice a week. He accepted that he was responsible for the operator's transport operations and that he failed to meet the undertakings on his licence. He also accepted that had impacted in fair competition and road safety. When it was put to him that his behaviour during his formal interview with DVSA had not been acceptable or in keeping with what I would expect from an operator he agreed under explanation that he had been under a lot of pressure.
103. Mr Stewart was actively monitoring what was happening now. He would oversee Mr Maguire and Donna Clark's work. Callum was doing toolbox talks regularly with drivers. Sandy told him what to do now. He was much happier now and more secure in the knowledge things were being done properly.

### **Conor Maguire**

104. I heard evidence from Conor Maguire regarding how he now managed the operator's transport operation. He spoke about the many improvements he had implemented and how he was very much a part of the team. He gave examples of disciplinary measures he had recently taken with drivers.
105. He felt that Mr Stewart had really taken notice and wanted to do things properly now. He had taken a step back to do things he wanted more and allowed Mr Maguire to exercise continuous and effective control of operations. He was happy that things were now working well. He would not risk his own repute working for an operator he did not think wanted to be compliant.

### **Submissions**

106. I heard submissions from Mr Docherty on behalf of the drivers he represented. I took account of all of those in reaching a decision on the relevant driver



conduct hearings, which are issued separately to this decision for the sake of brevity.

107. Mr Kelly submitted that this was a case not about the operator at large, but about one man – Mr Alan Stewart. There was evidently pride in the business and its long history. What had happened recently was not indicative of the wider picture. Maintenance was a distinct positive and we had heard evidence from several witnesses about the high standards which were in place. Record keeping in that regard was amongst the best in the industry. The business was like a family.
108. The overloading issues of the past had been resolved by the purchase of new trailers etc. It was unlikely to reoccur. The accident involving Liam Blair was an unfortunate incident. We had heard evidence of the training he had been given. He was inducted appropriately. Given the account given by Liam Blair of the incident, the consequences would likely have been the same regardless of the size of the vehicle. There was a serious financial impact for the operator as a result of the accident.
109. Across the board, the drivers that were in the employ of R W Stewart were competent and well trained. The operator worked in a niche section of the industry.
110. As regards the allegations of keeping vehicles away from the operating centre, Alan Stewart had admitted that at his interview with DVSA. He accepted some drivers were parking at places they should not have been. Mr Reece was parking near his home. Another driver was also parking near his home. Alan Stewart's motivation wasn't money, but the retention of good drivers.
111. In terms of the English sites, it was accepted that there ought to have been new GVOL sought for these operating centres. A new a new application had been made, albeit late. The practice of parking away from the operating centres had come to an end by the end of 2021.
112. Mr Stewart made no attempt to excuse that. He accepted that the Commissioner had put him on notice that operating centres must be specified on the licence. I had heard from Conor Maguire that undertakings in relation to operating centres were now being complied with. There was a new application before me and no objections were received in terms of that application.
113. Mr Kelly made reference to the case of *Michael Felon t/a Country Skips* and urged me to distinguish that from the instant case. He invited me to find that Alan Stewart was now in a position to meet undertakings on a GVOL and to be trusted. That was based on evidence given by the drivers and Conor Maguire not solely on what Alan Stewart himself said.
114. Mr Stewart had eventually realised that what might have been acceptable decades ago in terms of employing drivers on the basis of knowing their father or family was not enough. The employment of casual drivers had ceased. Driver

Steel thought he had the qualification and Alan Stewart though he had the qualification but checks weren't carried out. It was accepted that wasn't good enough.

115. The issue of monitoring missing mileage and the management of driver hours appeared to have fallen between two stools after Alan Stewart's ex-wife left. He was dealing with everything by himself. He was overwhelmed and his father, the transport manager, wasn't carrying out duties. These were all issues in the past. The operator has cut back the size of the operation significantly and had introduced a system of having a tacho head in the office which was worthy indeed.
116. With regards to the driver offences themselves, they were all accepted by the operator. The number of drivers employed by the operator had decreased. There was no longer reliance on casual drivers. The proof of improvement was in the infringement reports provided to the inquiry and the audit reports produced by Mr Robison.
117. In relation to the matters of the use of Driver McGurty's driver card, Mr Kelly invited me to find Mr McGurty's assertions and version of events to be incredible. Driver McGurty was unable to show complete texts, unlike Mr Stewart, to DVSA. Driver McGurty had either lied to DVSA at interview or lied to me at the PI, or worse both. His evidence was that he was in Dublin at 22:13 on 23 June 2020. When asked where he was when he sent that text and he said yard in Hindes. The drive from there to Dublin airport was 28 mins. Thereafter the flight to Glasgow is at least one hour and he had to be collected from the airport and driven to the yard.
118. Driver Rintoul's evidence was that he had picked Driver McGurty up at around 21:30/22:00. That timing fits with Driver McGurty's driver card being inserted in the vehicle unit 45 minutes before the lorry left Mr Stewarts yard. Driver MacDougall was adamant that Driver McGurty drove the vehicle. There was no evidence before me of a culture of card swapping more broadly at the operator's business.
119. There were many positives. Many drivers said that working at Stewarts was like being part of a family. Sandy Stewart was leading the way as the next generation of the business. Another strength was the involvement of Conor Maguire. If someone of a similar calibre had been in place in 2020, the operator probably wouldn't be at a public inquiry.
120. Donna Clark who worked in the office along with Mr Stewart was also an asset. The team being built around Mr Stewart is a strong one. It bodes well for the future. The application was made by the limited company and whilst the sole director and shareholder was Alan Stewart, the next generation coming up behind him was strong with an appropriate compliance mindset.
121. The inquiry had been a long time coming. The partnership licence would come to an end either by action of Reg 31 or by direct action taken by the me. Mr

Kelly asked me not to revoke the licence. I could answer the *Priority Freight* question in the affirmative and the *Brian Haulage* question in the negative. It was not at a situation of assurances only being given. Steps had been taken.

122. Mr Kelly thereafter addressed me on the starting points in the Senior Traffic Commissioner's guidance. His primary submission was that I should not disqualify Alan Stewart. He referred to the cases of *Dundee Plant* and *Thomas Muir* and reminded me that Commissioners can be merciful.
123. If there were a grant of a GVOL to the limited company, there would be compliance. I had heard evidence of the requirement for vehicles to service the pig industry.

### **Consideration of the evidence and balancing**

124. Despite the large volumes of evidence in this case, the issues before me - for the operator at least – were in fairly short compass. A large scale investigation by TE Wardrop had identified that the operator's systems for ensuring that the laws in relation to driving and drivers' hours were adhered to were woefully lacking. That was admitted on behalf of the operator partnership.
125. Based on the evidence before me, I find that systems probably started to fail after Alan Stewart's ex-wife had left in 2018. The transport manager, due to advancing age and, latterly, ill health was not exercising continuous and effective management of the transport operation. Alan Stewart, as the remaining partner and person running the business day to day, did not act to remedy that situation or the serious shortcomings which resulted.
126. Those failures have given rise to widespread offending of varying degrees and severity on the part of many of the operator's drivers, up to and including falsification of records. Prohibitions and fixed penalty notices have been issued. There was also continued use, despite a warning from my office in 2019, of unauthorised operating centres. It was accepted that there had been attempts made by Alan Stewart to circumvent the operator licencing regime. Formal findings in terms of Sections 26(1)(a), 26(1)(c)(iii), 26(1)(ca), 26(1)(e) and 26(1)(f) of the 1995 Act are made out. It was conceded on behalf of the operator partnership that the starting point for regulatory action in was severe.
127. The issue of the use of Driver McGurty's card was a significant feature of this case. TE Wardrop believed that Mr Stewart had either conspired with others in its use, or at the very least knew about it and turned a blind eye to it. Mr Stewart denied those allegations.
128. It was Driver McGurty's evidence during his first interview with TE Wardrop about not having had contact with Alan Stewart since 2018 that prompted Mr Stewart to provide the text messages exchange from June 2020. Those messages proved that Driver McGurty was lying but it also posed the question why would Alan Stewart, had he been complicit in the unauthorised use of Driver McGurty's old card, have gone out of his way to return the card to him?

Why not simply destroy it to hide the evidence? Why give it to Donna Clark to download?

129. Donna Clark, who I found to be a credible witness, also said that she had seen Mr McGurty about the yard since he left full-time employment at Stewart's. She knew he did bits of casual driving in return for a lift etc. Her evidence was that her anxiety around the comments in the email to TE Wardrop, and why she had asked Alan Stewart what to say, was that she knew Driver McGurty had not been paid for the casual work he had done.
130. Driver Espie and Driver Robb admitted unlawfully using Driver McGurty's card. Driver Espie stated that he had found the card in the truck and kept it for a long time before using it. Driver Robb 'forgot' how he had come into possession of the card but there was evidence that a third driver, Driver Reece had also used it. Driver Reece was, allegedly, a close friend of Driver McGurty and had been sacked by Mr Stewart for wrongdoing.
131. I found Driver McGurty to be an unimpressive and unreliable witness. He lied to TE Wardrop in his first interview about his contact and involvement with Alan Stewart. His evidence as regards his activities on the evening of 23 June 2020, as highlighted by Mr Kelly's extrapolation of the timelines involved in travel between Ireland and Glasgow, was clearly untrue. He produced a heavily edited text exchange between him and Alan Stewart to TE Wardrop, which just happened to have the text messages indicating that he had offered to drive or was having a card returned to him, removed. His evidence also indicated that he had an axe to grind with Mr Stewart.
132. Having weighed all of the evidence, I consider there is insufficient before me to find that Alan Stewart either conspired in the use of Driver McGurty's card or turned a blind eye to its use. I consider it more likely that one of the drivers, probably Driver Reece, was given or left the card by Driver McGurty and that he, Driver Espie and Driver Robb swapped it between them. There was no evidence that the unlawful use of driver cards was more widespread or to suggest that the drivers Espie and Robb needed to use a card illegally any more than any others employed by the operator. Had there been top down approval or conspiracy in the unlawful use of cards, I would have expected such a practice to be far more widespread.
133. I believed Alan Stewart when he said that he was unhappy with his drivers after finding the card had been used. However, I consider it more likely that was because of the trouble he knew it would bring to his door rather than any affront at the illegality involved. I noted that he did not take any effective or swift disciplinary action.
134. I find Alan Stewart's actions in taking Driver McGurty's card, keeping it and returning it to him instead of giving it directly to the authorities, to be broadly in keeping with what I have found to be his ineffective, lax and overly ameliorative approach to driver management. It paid him to keep Driver McGurty on side - he did casual work for him and would no doubt continue to be useful in the

future – just like it paid him to keep drivers on side by letting them take lorries home. Mr Stewart admitted in his evidence that he wanted to keep drivers and behaved in a way to help him do so. However, breaking the rules in pursuit of that strikes right at the heart of fair competition.

135. On the evidence before me, I agree with Mr Kelly's submission that this is a case about one man – Mr Alan Stewart. In the absence of his father, partner and transport manager, Mr Stewart has failed to ensure that the operator partnership of George James Stewart & Alan George Stewart t/a RW Stewart met its licence undertakings. For an operator with such a proud history and family tradition that, of itself, is a heavy burden to bear.
136. Had the failings stopped at a failure to adhere to the licence undertakings, I may have been able to accept Mr Kelly's primary submission that the partnership licence need not be revoked. However, Alan Stewart's behaviour is not limited to a simple failure, due to overwork or family loss, to meet the licence undertakings.
137. Mr Stewart lied to DVSA in the course of an investigation, a lie which he perpetuated until he was compelled to tell the truth to counter Driver McGurty's lies. In addition, his behaviour at interview with DVSA officers fell significantly short of the conduct I would expect of a responsible operator. He has failed to heed a warning from my office in respect of the use of unauthorised operating centres and has failed to properly manage or discipline drivers. Such behaviour amounts to a wilful disregard for the licencing regime and will not be tolerated.
138. Fair competition and road safety had undoubtedly been compromised. Mr Stewart has gained advantage by using casual drivers. He has also allowed drivers to break the rules and given them far too much latitude in attempts to keep them in circumstances where other, compliant, operators would likely have lost out.
139. I accept that Mr Stewart found himself under pressure during 2019/2020. He has suffered the loss of several family members including his father and a marital breakdown which clearly had a far-reaching impact. There are also positives. Maintenance appears to be generally good as does the record keeping in relation to it. It is a relatively new fleet and there is investment in new units. I also accept, with reference to evidence I heard in private session, that Mr Stewart has worked hard, at great cost, to remedy a financial situation which arose through no fault of his own.
140. There are committed and enthusiastic family members coming through the ranks and experienced staff on board. I was impressed by the evidence of Sandy Stewart and Conor Maguire. I believe that there is a culture of compliance now and that standards are much improved. There is auditing and a promise to continue that into the future.
141. I also find the serious accident involving Liam Blair to have arisen as a result of driver error. There was no evidence to suggest that he was not properly trained,

nor that he was over his hours or driving unlawfully at the time. It was a tragic and costly accident, not least in financial terms, for the operator.

142. I was however, not convinced by Mr Stewart's evidence regarding his current oversight of operations, or that he had played any great part in making the necessary improvements. He was happy going back to dealing with the livestock and focussing on things he enjoyed doing. He may have instructed others, but I remained unconvinced that he would exercise the requisite degree of rigour in managing the transport operations going forward. The evidence strongly indicated that the responsibility for compliance going forward would largely fall to Sandy Stewart, Callum Stewart and Mr Maguire.
143. I directed in this case, pursuant to Regulation 31 of the 1995 Regulations, that Alan Stewart be allowed to carry on the business of the operator pending the conclusion the inquiry. The peculiarities of Scots law (and I was not advised of the existence of any partnership deed providing for a departure from the generality) mean that the partnership ceased to exist upon Mr Stewart Senior's death. However, up until his father's death, and during the period in focus for this inquiry, Alan Stewart was the partner responsible for running the transport operation. The repute of the partnership, and by extension that of Mr Stewart, is therefore still a live issue before me.
144. Even balancing in the positives in this case, I find that they cannot outweigh the serious negatives identified on the part of Mr Alan Stewart. He lacks the rigour, honesty and focussed approach necessary to be an operator of heavy goods vehicles in my traffic area. Fair competition and road safety have, undoubtedly, been seriously compromised by his actions. As a result, I have lost all trust in Alan Stewart. NT/2013/82 Arnold Transport & Sons Ltd v DOENI is referred to for its terms.
145. I have no hesitation therefore, in finding that the partnership, and by extension Mr Alan Stewart, has/have lost repute as an operator. Had the partnership remained in existence under the stewardship of Mr Stewart alone, the questions posed in 2009/225 Priority Freight and T/2002/217 Bryan Haulage (No.2) would have to have been answered 'no' and 'yes' in turn. Operator licence OM0035386 is accordingly revoked with effect from 23:59 on 11 August 2023. I stop short of disqualification only for the reason that the partnership is no longer in existence.
146. I turn now to the new application. The application is made by the limited company. Mr Kelly advised shortly after the inquiry that Mr Sandy Stewart and Mr Callum Stewart were to be appointed as directors in addition to Mr Stewart and that was being attended to forthwith. That has now been done.
147. Having paid close attention to all the evidence and documentation lodged for the inquiry it is clear that the systems for the operation of vehicles are now as they should be. There is focus and a drive to get things right on the part of the generation taking over. The proposed transport manger is credible and competent.

148. Consequently, I am prepared to grant the new application as sought. I do so with effect from 23:59 on 10 August 2023 so that there may be continued operations. I do so, however, with the strongest of warnings as to future compliance. Given the history that is before me, if any further concerns are brought my attention, it is likely that operation will quickly find themselves back at inquiry. I am placing my trust in Mr Sandy Stewart and Mr Callum Stewart.
149. There will also be an undertaking to have a full systems audit carried out by a recognised trade body or equivalent organisation, the report to be provided to my office within 3 months of this decision, and an updated report within 9 months of the same date.
150. As a former partner of an operator who has lost its repute Alan Stewart should now resign as a director of the operator company. I direct that evidence of such be provided to my office within 4 weeks of the date of this decision.
151. Should Alan Stewart wish to be re-appointed as a director in the future, I direct that he should attend a hearing before a traffic commissioner to consider whether his repute can be found to be restored.

Claire M Gilmore

A handwritten signature in black ink, appearing to read 'C. Gilmore', with a long horizontal flourish underneath.

Traffic Commissioner for Scotland  
14 August 2023