SHERIFFDOM OF TAYSIDE, CENTRAL AND FIFE AT KIRKCALDY

[2026] SC KDY 110

KKD-B91-26

JUDGMENT OF SHERIFF JOHN A MACRITCHIE SSC

in the appeal under section 119 of the Road Traffic Act 1988

by

DARREN WADE

Appellant

against

THE DEPUTY TRAFFIC COMMISSIONER FOR SCOTLAND

Respondent

Appellant: party
Respondent: McMahon

KIRKCALDY, 27 August 2026

Introduction and scope of the appeal

[1] This is an appeal under section 119 of the Road Traffic Act 1988 ("the 1988 Act"), from a written decision of the Deputy Traffic Commissioner for Scotland dated 6 February 2026. The decision followed a reference by the Secretary of State under section 116(1)(a) of the 1988 Act, and a driver conduct hearing held, in the appellant's absence, on 20 May 2025.

[2] The respondent determined: first, that the appellant's conduct made him unfit to hold a Large Goods Vehicle ("LGV") driver's licence; second, that his LGV entitlement should be revoked; and third, that he should be disqualified indefinitely from holding LGV entitlement. The revocation and disqualification were directed to take effect at 2359 hours on 1 May 2026.

[3] The appeal is deliberately narrow. The appellant accepts the respondent's findings of unfitness and does not challenge revocation. He accepts that his conduct fell below the standard expected of a vocational driver, that the matters were serious and that a substantial period of disqualification was justified. He challenges only the selection of an indefinite, rather than a substantial finite, disqualification.

[4] The issue is not what sanction I would have imposed had the matter come before me at first instance. An appeal of this kind is not a rehearing. The question is whether the respondent, in selecting indefinite disqualification based on his findings, fell into one of the recognised errors governing appellate review of a discretionary decision. For the reasons set out below, I have concluded that he did not and that the appeal must be refused.

Procedural history

[5] On 6 May 2025, the appellant was called to a driver conduct hearing conjoined with a public inquiry concerning DLZ Continental Transport Ltd ("DLZ"). The hearing was fixed for 20 May 2025. Although required by the respondent to attend at the driver's conduct hearing in terms of section 116(3) of the 1988 Act, the appellant notified the Office of the Traffic Commissioner on 14 May 2025 that he would not be attending but did submit written representations. The respondent proceeded on the papers and on the evidence given by Traffic Examiner Barry Wardrop.

[6] The respondent issued his written decision on 6 February 2026. The Office of the Traffic Commissioner notified the appellant by letter dated 10 February 2026. The present summary application was lodged within the statutory period. Warrant of citation was granted on 6 March 2026, with a first hearing assigned for 21 April 2026.

[7] On 21 April 2026, the respondent was allowed 21 days to lodge answers, and the cause was continued to 19 May 2026. On 19 May 2026 the court allowed the appellant's supporting statements and productions to be received in their existing form and assigned a hearing on the merits, by submissions only, for 17 August 2026.

[8] At the hearing on 17 August 2026 the appellant appeared personally, accompanied by his wife, Mrs Lorraine Wade, as a supporter. Ms McMahon, solicitor, appeared for the respondent. The application, answers, parties' written submissions, the productions for each party, and the list of authorities are substantial. Both parties were afforded the opportunity to emphasise and supplement their written submissions. I thereafter made avizandum to consider the reasonably substantial process in more detail and to provide this written judgment as the appellant indicated he preferred.

Factual and regulatory background

[9] DLZ was a small haulage operation. Mrs Wade was its transport manager and, for the relevant period, a director and majority shareholder.

[10] The appellant, her husband, was a director during part of the relevant period and was DLZ's principal driver. The respondent described the operation as involving one vehicle and, in substance, one driver.

[11] Traffic Examiner Wardrop requested vehicle-unit data, driver-card data, working-time material, infringement reports and missing-mileage reports for the period from 1 June to 31 August 2024. On a visit on 18 November 2024, he discovered that DLZ had no system in place to comply with working-time requirements and had generated neither infringement nor missing-mileage reports.

[12] DLZ provided data for one vehicle and two drivers: the appellant and Craig Macdonald, the appellant's brother-in-law. Mr Macdonald was said by the appellant and Mrs Wade to drive only *ad hoc* and locally, in order to allow the appellant to rest. They said that Mr Macdonald was not used for work in England, international journeys or double-manned journeys with the appellant. However, Mr Macdonald's driver certificate of professional competence expired on 4 December 2021.

[13] Mr Wardrop's analysis showed Mr Macdonald's card being used on 30 days between 1 June and 16 September 2024, including journeys to England and continental Europe. Automatic Number Plate Recognition ("ANPR") and other data placed the vehicle in locations inconsistent with the account that Mr Macdonald drove only locally. When interviewed on 7 January 2025, Mr Macdonald ultimately denied carrying out any of the driving during the analysis period and said that he must have left or dropped his card in the vehicle.

[14] The appellant was interviewed on 24 February 2025. He answered preliminary questions but responded "no comment" when asked about the suspected offences and terminated the interview before all potential offences had been put to him.

[15] Mrs Wade was also interviewed and answered "no comment" to questions concerning the suspected use of Mr Macdonald's card.

The respondent's findings

Use of another driver's card and concealed offences

[16] The respondent accepted Mr Wardrop's analysis and found, on the balance of probabilities, that the appellant used Mr Macdonald's digicard on 30 occasions to create false tachograph records. Those records concealed 47 drivers' hours offences. The respondent

relied upon the digital data, the patterns and rapid changeovers between cards, the ANPR evidence, Mr Macdonald's ultimate account and the absence of a credible alternative explanation.

[17] The 47 concealed offences comprised:

(a) 10 offences of exceeding the daily driving limit;

(b) 15 offences of taking insufficient daily rest;

(c) 11 offences of exceeding 4.5 hours of driving without the required break;

(d) 6 offences of exceeding 90 hours driving in a fortnight;

(e) 1 offence of exceeding 56 hours driving in a week; and

(f) 4 offences of taking insufficient weekly rest.

[18] The respondent identified a number of especially grave episodes:

(a) On 23-24 June 2024 the appellant drove for 21 hours 33 minutes, against a daily limit of 10 hours;

(b) On 25 June 2024 he took only 4 hours 28 minutes daily rest, drove for 16 hours 12 minutes and drove continuously for 6 hours 47 minutes without the required break;

(c) On 30 June 2024 he took only 4 hours 55 minutes daily rest and drove continuously for 7 hours 14 minutes;

(d) On 2 July 2024 he took only 4 hours 52 minutes daily rest and drove for 17 hours 45 minutes;

(e) On 6 July 2024 he took only 7 hours 33 minutes daily rest;

(f) On 18-19 August 2024 he took only 6 hours 27 minutes daily rest and drove continuously for 6 hours 9 minutes;

(g) On 19-20 August 2024 he took only 5 hours 48 minutes daily rest and drove for 12 hours; and

(h) On 23-24 August 2024 he took only 6 hours 46 minutes daily rest and drove for 12 hours 57 minutes.

[19] The respondent inferred that on at least eight occasions the appellant drove after insufficient rest, was fatigued and presented an actual danger to other road users. On the remaining occasions the failure to take mandatory rest created a potential risk. He further found that the ability to drive longer than compliant drivers conferred a commercial advantage upon DLZ.

Driving without a card

[20] The appellant admitted driving without a card on 18 occasions. Most periods were short, but three were materially longer: 16 minutes, 17 minutes and 1 hour 16 minutes.

[21] The appellant said that the vehicle had been moved at customers' premises to enable him to use toilet or shower facilities. The respondent rejected that explanation as insufficient to account for movement of the vehicle, particularly the longer periods.

[22] The respondent considered whether the no-card driving was merely careless or was deliberate and intended to deceive. He took account of the established use of another driver's card, the purpose of concealing drivers' hours offences, the absence of tested oral evidence from the appellant and the objective data. He concluded that the no-card driving was deliberate and was likewise undertaken to conceal offences.

[23] On eight of the no-card days the appellant had failed to take at least 9 hours' daily rest. The recorded daily rest was, respectively, 6 hours 42 minutes; 7 hours 33 minutes; 3 hours 27 minutes; 4 hours 6 minutes; 7 hours 31 minutes; 8 hours; 8 hours 17 minutes;

and 7 hours 41 minutes. The respondent regarded the instances of 3 hours 27 minutes and 4 hours 6 minutes as particularly concerning and again inferred actual or potential fatigue and risk to road safety.

Overall findings, mitigation and aggravation

[24] The respondent found that the conduct was deliberate, repeated and sustained; that it concealed extensive non-compliance; that the appellant drove when fatigued and caused actual and potential danger; and that the purpose was to benefit the business of which he and Mrs Wade were directors and shareholders.

[25] He found the appellant untrustworthy in relation to compliance with tachograph and drivers' hours obligations.

[26] The respondent treated the following as aggravating features: actual and potential fatigue and undue road-safety risk; the prolific number of offences; deliberate falsification; the period over which the offences were committed; the commercial benefit to the business; and the appellant's failure to co-operate by refusing to attend the driver conduct hearing as he had been required to do, as aforesaid.

[27] The respondent treated the following as mitigating features: the absence of previous convictions; the absence of repetition since September 2024; and the appellant's written statement that he had been under considerable emotional and mental strain because of family circumstances. He also inferred that loss of LGV entitlement would cause financial hardship.

[28] The respondent concluded that the aggravating factors clearly outweighed the mitigating factors. He attached little weight to subsequent non-offending and to the family circumstances as then explained. He found that the appellant could not be trusted to

comply with the applicable rules, had shown unwillingness to co-operate with the Driver and Vehicle Standards Agency and the regulatory process, and had demonstrated that he should not be permitted to drive LGVs in the future. He accordingly revoked the LGV licence and imposed indefinite disqualification.

The appellant's case

Written application, productions and submissions

[29] In the summary application the appellant accepted misuse of a driver card and failures of tachograph compliance; recognised their seriousness; expressed remorse; and accepted that his conduct fell below the required professional standard.

[30] He relied upon serious family circumstances, including his mother's critical illness and later death, associated emotional distress and sleep disruption, absence of previous convictions or regulatory findings, and absence of repetition. He contended that indefinite disqualification was disproportionate and that a substantial finite period would adequately mark the misconduct, deter, protect the public and uphold the regulatory regime.

[31] The appellant lodged a personal statement, a supporting statement from Mrs Wade and a character reference from Christopher Hughes. The personal statement explained that his mother had experienced serious health difficulties. The appellant described fear for her, severe stress, exhaustion, poor sleep and difficulty coping while operating a one-truck business and supporting his family.

[32] He accepted that he should have sought help and that he should have attended the driver conduct hearing. Mrs Wade described observing exhaustion, poor sleep, anxiety, withdrawal and emotional pressure. Mr Hughes described the conduct as out of character and referred to remorse and previous good character.

[33] In supplementary written submissions dated 13 August 2026 the appellant accepted the appellate test in *Smith* and *Kirkpatrick infra*. He did not invite the court merely to substitute its preferred sanction. However, his contention was that the respondent had not adequately justified the qualitative step from a substantial finite sanction to indefinite disqualification.

[34] The appellant relied upon proportionality. He submitted that deterrence, although legitimate, must not be given excessive weight; that the respondent's references to sending a message and maintaining confidence in the regime did not explain why no finite sanction would suffice; and that livelihood remained relevant to the balance.

[35] He accepted that statutory document number 6 *infra* supplied starting points rather than limits and that a substantial upward departure was justified. He relied, however, upon case example 22 therein, in which large numbers of false-record offences involving magnets and interrupter switches produced disqualifications ranging from 12 months to 4 years. He submitted that the example was relevant to proportionality even though it did not impose a maximum.

[36] The appellant submitted that the accepted mitigating factors: no previous convictions, no repetition and significant personal circumstances, were material when considering whether he should be excluded from LGV driving indefinitely. He accepted that his refusal to attend the hearing limited the respondent's ability to clarify matters but submitted that it did not demonstrate permanent inability or unwillingness to comply.

[37] He did not found the appeal upon post-decision evidence as such, but maintained that the decision, on the material then available, did not adequately justify indefinite disqualification. He further submitted that regulation 57 *infra* did not convert the order into

a 5-year fixed disqualification: it merely permitted an application for removal after 5 years, with no guarantee of success.

Oral submissions on 17 August 2026

[38] In oral submissions the appellant described his mother's longstanding illness, and the continuing impact on him of her death. He said that he had not been himself during the relevant period and had not previously appeared before a traffic commissioner. He referred to two fines many years earlier and otherwise good compliance over a long driving career.

[39] He accepted that the rules existed, did not excuse what he had done and said that, in hindsight, he should have sought professional help. However, the appellant then suggested that the figures made matters look worse because all alleged infringements had been added together without allowing for signed tachograph printouts, traffic jams and diversions. He nevertheless then repeatedly said that he was not seeking to contest the misconduct. He considered even 5 years too long because he was approaching 56, had always worked as a driver, anticipated difficulty obtaining other employment and wished to support a son studying in the United States.

[40] He suggested that his refusal to attend the driver conduct hearing was a serious mistake, describing it as "stupid" and acknowledging that he should have contacted the respondent to seek an adjournment. He attributed that refusal to the circumstances concerning his mother.

[41] In later reply, the appellant returned to his explanation for the 18 no-card incidents and then alleged that Mr Wardrop had pressured Mr Macdonald. He also described a later DVSA roadside stop which he considered unsafe and unfair. He was unable to explain how such complaints bore upon the lawfulness of the sanction under appeal. The appellant

asked whether a further driver conduct hearing could take place. I explained that the appeal was not such a rehearing.

The respondent's case

Written answers and submissions

[42] The respondent's solicitor maintained that indefinite disqualification was a reasonable exercise of discretion. She relied upon the said 30 deliberate uses of another person's card, 18 deliberate no-card incidents, concealment of 47 drivers' hours offences, actual and potential fatigue, sustained falsification, commercial advantage and non-co-operation.

[43] It was submitted that statutory document number 6 had been properly applied. Annex A sets a guide starting point of revocation and 12 months' disqualification for one use of another person's digicard, with a longer period for two or more. It sets revocation and 12 months' disqualification as a guide starting point where there are more than six deliberate no-card offences. The present case was far beyond each starting point threshold.

[44] The respondent emphasised paragraphs 94 to 96 of statutory document number 6, *viz* that drivers' hours and tachograph rules protect the public; deliberate false records are always serious; concealment of regulatory evidence warrants a very serious view; falsification may be more serious than the concealed offence; and that a cumulative and significant disqualification is the likely outcome.

[45] The respondent submitted that the written decision expressly identified both mitigation and aggravation, attributed weight to each and explained why aggravation predominated. The appellant's family circumstances were before the respondent; the

appellant's refusal to attend prevented further exploration. The later supporting material could not retrospectively render the original exercise of discretion unlawful.

[46] Reliance was placed upon *Smith* v *Secretary of State for Transport* 2011 WL 2747750; *Kirkpatrick* v *Secretary of State for Transport* 2011 WL 2747749; A Cubie, *Macphail's Sheriff Court Practice* (4th Edition, W Green, 2022) and *HA (Iraq)* v *Secretary of State for the Home Department* [2022] UKSC 22. In that regard the court was urged to exercise restraint in reviewing a specialist decision-maker, not to infer omission merely because every step was not express, and not to substitute its own view of the proper period of disqualification.

[47] The respondent further relied upon regulation 57 *infra*. Although the disqualification is indefinite, the appellant may apply for removal after 5 years. That mechanism permits fitness and risk to be assessed on current evidence at that stage. The respondent moved the court to refuse the appeal and find the appellant liable in expenses.

Oral submissions on 17 August 2026

[48] The respondent's solicitor maintained that the respondent had exercised the discretion entrusted to him and had neither misdirected himself nor mishandled evidence or relevant considerations. She stressed that the appeal did not challenge the admitted conduct or factual findings. She submitted that 30 instances of conduct for which a single instance attracts a 12-month starting point, together with 18 deliberate no-card incidents, comprised exceptionally serious and concentrated offending.

[49] She pointed out that Annex A provides entry points, not arithmetical tariffs. Her submission was that the entry points demonstrated the intrinsic seriousness of each category and that the respondent was entitled, in light of multiplicity and aggravations, to move to indefinite disqualification.

[50] She emphasised that the family circumstances, clean record and absence of repetition had all been considered but were reasonably outweighed by prolific and deliberate falsification, fatigue risk, duration, commercial benefit and non-cooperation.

[51] It was submitted that the statutory power in section 117(2)(a) expressly permits indefinite disqualification and that the decision fell within the range reasonably open to the respondent. Her final motion was that the appeal be refused and expenses awarded to the respondent.

Statutory framework

[52] Section 115(1)(b) of the 1988 Act requires an LGV driver's licence to be revoked or suspended if the holder's conduct makes him unfit to hold it. "Conduct" in relation to an LGV driver means conduct as a driver of a motor vehicle in terms of section 121(1).

[53] Under section 116(1)(a), the Secretary of State may refer to a traffic commissioner the question of whether, by reason of conduct, a person is fit to hold an LGV licence. Where the respondent determines that the holder is unfit, section 116(2) requires determination of whether revocation or suspension is required and, if revocation is required, whether the holder should be disqualified under section 117(2)(a), and for what period.

[54] Section 116(3) permits the respondent to require information, attendance and answers at a driver's conduct hearing. Section 116(4) confers powers where a holder, without reasonable excuse, fails to comply. Independently of those powers, a failure to attend may bear upon the available evidence and, where relevant, upon co-operation and present fitness, provided it is treated rationally and proportionately.

[55] Section 117(2)(a) applies where a licence is revoked under section 115(1)(b). It permits the person to be disqualified indefinitely or for such period as the decision-maker

thinks fit. The statutory choice therefore expressly includes both finite and indefinite disqualification. The question is not whether indefinite disqualification was legally available; plainly it was. The question is whether the discretion to select it was lawfully exercised.

[56] Section 119 confers the right of appeal to the sheriff and empowers the sheriff to make such order as he thinks fit. That broad remedial power does not alter the established nature of review in a Scottish appeal from this specialist discretionary decision.

[57] Regulation 57 of the Motor Vehicles (Driving Licences) Regulations 1999 permits the Secretary of State, after consultation with a traffic respondent where appropriate, to remove a disqualification imposed under section 117(2)(a). In a case such as this an application may be made after 5 years. Removal is not automatic. The regulation nevertheless bears upon the practical character of an indefinite order: it preserves a route by which future fitness can be assessed on then-current evidence rather than presuming at the outset that fitness will necessarily return on a specified date.

Statutory guidance and directions

[58] Traffic commissioners must have regard to the senior traffic respondent's statutory document number 6, vocational driver conduct. The document promotes consistency while preserving individual assessment. Paragraphs 87 to 90 make clear that the criminal and regulatory exercises differ; that cases contain differing positive and negative features; that starting points cannot predict the outcome; and that each case must be decided on its own evidence, including the number and type of offences, planning, repetition, aggravation, mitigation and future risk.

[59] Paragraphs 60 and 61 require the decision-maker to consider conduct as a whole, good and bad, and prolonged post-offence conduct. Paragraph 63 distinguishes circumstances mitigating the conduct itself from hardship ordinarily relevant only to penalty. Paragraph 64 permits personal circumstances, references and post-incident life to be considered in deciding whether revocation and disqualification are required.

[60] Paragraph 65 permits a cumulative and longer disqualification where aggravating factors are present, while prohibiting reliance on offences not brought before the hearing. Paragraph 66 recognises that credibility and reliability may be considered and that significant cases may justify a deterrent marker.

[61] Paragraphs 94 to 96 identify deliberate false records and concealment as especially serious because drivers' hours controls exist to protect the public. They state that falsification is likely to be regarded as more serious than the infringement concealed and that a cumulative and significant period reflecting the concealed offences, falsification and any manipulation device is the likely outcome. Subsequent conduct may carry limited weight.

[62] Annex A gives a starting point of 4 weeks' suspension per deliberate no-card offence up to six, and revocation with 12 months' disqualification for more than six. For using another person's digicard, treated as tachograph interference, the starting point is revocation and 12 months for a single offence, longer for two or more. These are starting points, not maxima and not ingredients of an arithmetical accumulation exercise.

[63] Annex C identifies relevant aggravating features including fatigue risk, serious or prolonged offending, failure to co-operate with enforcement, deliberate falsification, duplicate digicards or ghost drivers, concealment over a sustained period and commercial advantage. Mitigation includes absence of previous convictions, isolated or less serious

conduct, lack of fatigue, exceptional circumstances and co-operation. The lists are expressly non-exhaustive.

[64] Annex D is illustrative. Its introduction states that the presiding commissioner retains discretion to move up or down and that examples cannot predict an individual outcome. Case example 22 concerns numerous false records using magnets and interrupter switches, with disqualifications between 12 months and 4 years. Case example 23 treats one use of another person's card as sufficiently serious for revocation and 12 months' disqualification. The examples inform comparison; they do not create a ceiling.

The appellate test

[65] In *Smith* v *Secretary of State for Transport supra* at paragraph 28, and *Kirkpatrick* v *Secretary of State for Transport supra* at paragraph 31, Sheriff Principal Lockhart stated that the sheriff may intervene only if the traffic commissioner did not exercise discretion at all, misdirected himself in law, misunderstood or misused evidence or material facts, took account of an irrelevant consideration, failed to take account of a relevant consideration, or otherwise exercised discretion wrongly.

[66] That is the familiar and deliberately restrictive standard for review of a discretionary decision. It reflects institutional competence: Parliament entrusts the initial evaluative judgment about vocational fitness and regulatory sanction to traffic commissioners. An appellate court is not entitled to interfere merely because it might have selected a different period or attributed different weight to competing considerations.

[67] *Macphail's Sheriff Court Practice*, *supra*, chapter 18, similarly explains that intervention requires an identifiable error of principle, misuse of facts, mishandling of relevant or irrelevant matters, or an outcome beyond the range reasonably open to the decision-maker.

Descriptions such as "plainly wrong", "wholly unwarranted" or "manifestly inequitable" express the high threshold; and that it is not for this court to substitute its own decision.

[68] *HA (Iraq)* v *Secretary of State for the Home Department supra* paragraph 72, although concerning a different statutory context, reinforces the need for caution when reviewing a specialist fact-finding tribunal. The appellate court should read reasons fairly and as a whole, respect the specialist tribunal's evaluation, avoid assuming that an unmentioned step was ignored, and not treat imperfect expression as legal error.

[69] Proportionality remains inherent in the lawful exercise of the sanctioning discretion. But in this appellate context it is not a free-standing invitation to determine afresh the period that appears preferable. The relevant question is whether the respondent's balancing of legitimate regulatory aims and the individual circumstances produced an outcome outside the lawful range or was infected by one of the *Smith* errors.

Discussion

The decision must be read as a whole

[70] The appellant's central criticism is a reasons challenge: the decision is said to explain why revocation and a substantial disqualification were necessary, but not why no finite period would suffice. I reject that characterisation. Reasons are to be read fairly, in context and as a whole, not as if each conclusion required a separate formula of words.

[71] The respondent first established the scale and character of the offending. He then identified the applicable statutory power, the guidance, both classes of starting point, the relevant aggravating and mitigating factors, the need for cumulative treatment, deterrence, road safety, fair competition, co-operation and future trust. He finally concluded that the appellant could not be trusted to comply, had demonstrated that he should not be allowed

to drive LGVs in the future, and should be disqualified indefinitely. That sequence supplies a clear intellectual route from findings to sanction.

[72] An indefinite order is not justified merely by attaching that label to serious offending. Here, however, the respondent made the further evaluative finding that present and future fitness could not safely be assumed to revive after a pre-selected term. The conclusion about trust was anchored in repeated, deliberate steps to dishonestly defeat the regulatory system, conceal excessive driving and secure commercial advantage, coupled with a refusal to attend the hearing where the appellant could have addressed those concerns. It was not an unexplained leap.

Seriousness, multiplicity and road-safety risk

[73] The conduct was not a single lapse, a technical recording failure or a marginal excess. It involved 30 uses of another driver's card, 18 deliberate no-card incidents and concealment of 47 hours offences over more than 3 months. The use of another person's card required repeated positive decisions. It falsified the very records by which compliance and fatigue risk are policed.

[74] The underlying infringements were themselves grave. Driving for 21 hours 33 minutes in a day, driving for 17 hours 45 minutes after fewer than 5 hours' rest, and repeated episodes of severely curtailed rest created a direct nexus between falsification and road danger. The respondent was entitled to find actual fatigue risk on at least eight occasions and potential risk more widely. The absence of an accident does not neutralise conduct which exposed other road users to a foreseeable risk of catastrophic harm.

[75] The appellant's oral suggestion that the figures may have included signed printouts, traffic delays or diversions does not establish error in the decision under appeal. The factual

findings were made on detailed data and were not challenged in the application. The appellant expressly confines his appeal to sanction. In any event, his oral observations did not identify which of the respondent's established findings was erroneous or provide a basis on which this court could revisit them in a submissions-only appeal.

Application of the guidance

[76] The respondent did not treat Annex A mechanically. He identified that each category alone crossed the threshold for revocation and at least 12 months' disqualification. He then considered multiplicity, concealed offending and the aggravating features in the round, as paragraphs 65 and 96 direct. That was the proper use of a starting point.

[77] The discussion at the oral hearing about a notional aggregation of annual periods should not be understood as a legal tariff or as part of my reasoning. Thirty single-offence starting points do not produce 30 years, nor do the 18 no-card incidents produce a further 18 years. The proper significance is qualitative: conduct recurring on such a scale lies far beyond the cases for which the minimum entry points are framed. The respondent's decision applied that qualitative assessment.

[78] Case example 22 does not demonstrate disproportionality. It gives no detailed facts enabling exact comparison, describes a range among multiple drivers and is expressly illustrative. It does not say that 4 years is the maximum for falsification. More fundamentally, this case included 30 uses of another person's card, 47 concealed offences, 18 additional no-card incidents, compelling fatigue findings, commercial advantage and non-co-operation. The respondent was entitled to view the combination as exceptional.

[79] *Kirkpatrick* and *Smith supra* do not establish a finite ceiling. In each, appellate intervention was justified because the commissioner speculated about unproved additional

falsifications and thereby misused material facts. The appellate court then assessed sanction on the proved conduct and relevant guidance. Here, by contrast, the appellant identifies no unproved offence used to enhance sanction. The respondent confined himself to the said 30, 18 and 47 findings supported by the material before him. The error found in those authorities is absent.

Mitigation and personal circumstances

[80] The respondent expressly recorded the absence of previous convictions, absence of repetition and family-related emotional and mental strain. He also considered likely financial hardship. It follows that there was no failure to take those matters into account. The appellant's complaint is, in substance, about weight.

[81] The appellant's purported explanation for his conduct relative to his mother's ill health is double edged. The said deliberate, significant and numerous breaches of the driver's hours requirements while in such a physical and mental state could reasonably be regarded as aggravating rather than mitigating the appellant's offending, as the considerable risk he thereby repeatedly posed to road safety was easily inferred.

[82] Accordingly, weight was for the respondent unless attributed irrationally or on a wrong legal basis. The guidance permitted him to give limited weight to personal circumstances and subsequent conduct where deliberate falsification was established. It also distinguished hardship from circumstances mitigating the conduct itself. He was entitled to find that a clean record and non-repetition did not outweigh the repeated planned falsification and extreme hours infringements.

[83] The family circumstances plainly merit human sympathy. They were relevant and were treated as mitigation. But the respondent was entitled to observe that the account then

provided was brief and unexplained in material respects. The appellant had elected not to attend and thus removed the opportunity for questions about timing, causation, severity, support and the relationship between those circumstances and dishonest and repeated use of another person's card.

[84] The later statements provide fuller context, but do not establish that the original decision-maker ignored what was before him. Nor can they transform the appeal into a rehearing on new evidence. Even taken at their highest, they explain distress and impaired coping; they do not compel the conclusion that indefinite disqualification lay outside the range reasonably open in response to such deliberate and dishonest conduct repeated over months.

[85] The appellant's livelihood, age and family responsibilities are important to him, and I do not minimise their effect. The respondent inferred financial hardship and considered it. Regulatory action safeguarding the public will often have severe consequences for a professional driver. Those consequences do not become determinative where the conduct demonstrates serious and sustained abuse of the licence and the system designed to control fatigue.

Non-attendance and co-operation

[86] The appellant would always have a right not to incriminate himself in any proceedings. However, non-attendance was not used to justify a free-standing punishment. The respondent was entitled to proceed on the papers under the statutory scheme and the guidance. He was also entitled to treat a refusal to attend as he was statutorily entitled to require, without adequate reason, as evidence of non-cooperation and as a factor limiting his ability to test claimed mitigation and assess insight and future reliability.

[87] The appellant now accepts that he should have attended or sought an adjournment. That acceptance is to his credit, but it also confirms that the respondent was not acting upon a factual mistake. In a regime dependent upon accurate records, candid engagement and enforceability, deliberate non-co-operation was relevant to whether trust had been restored. The weight given to it was not excessive in law when placed alongside, rather than in substitution for, the underlying misconduct.

Deterrence, public confidence and fair competition

[88] The respondent referred to sending a message, deterring others and avoiding disrepute to the regulatory regime. Those were not irrelevant preventative purposes. Statutory document number 6 expressly permits a deterrent marker in significant cases, and the case law recognises deterrence where it serves the objectives of the legislation rather than punishment for its own sake.

[89] The connection with the statutory purpose was explicit. Concealing hours offences compromises road safety and obstructs effective enforcement. It also creates unfair competition by allowing a business to obtain work through hours that compliant operators and drivers cannot lawfully perform. The respondent's references to deterrence and confidence were therefore tethered to safety, compliance and fair competition. There is no basis for concluding that deterrence was afforded legally excessive or dominant weight.

Indefinite disqualification and regulation 57

[90] The appellant correctly submits that an indefinite disqualification does not automatically expire after 5 years. The respondent’s contrary formulation in the answers, if read as equating the two, would be inaccurate. Regulation 57 creates eligibility to apply for

removal; it does not guarantee removal. That distinction, however, does not undermine the original decision.

[91] The review mechanism supports the rationality of the form of order in a case concerned with trust and future fitness. A finite period assumes now that entitlement should return at the end of that period, irrespective of the evidence then available. An indefinite order with a 5-year threshold enables the Secretary of State, after the prescribed consultation, to assess whether the appellant has demonstrated rehabilitation, insight, stability and future compliance. The respondent was entitled to conclude that such an assessment was appropriate before LGV entitlement could return.

[92] I do not treat regulation 57 as curing an otherwise disproportionate order. The order must be justified when made. It was justified here by the respondent's findings as to seriousness, repetition, concealment, fatigue risk, commercial advantage, non-co-operation and lack of demonstrated trustworthiness. Regulation 57 explains the practical operation of the order and answers the suggestion that the decision necessarily excludes restoration for life without reconsideration.

Overall assessment under the appellate test

[93] The respondent exercised the discretion: he identified the statutory choices and selected among them. He did not misdirect himself in law: indefinite disqualification was authorised and the guidance was correctly treated as non-prescriptive. He did not misunderstand or misuse material facts: the sanction rested upon proved findings, not speculation. He did not take irrelevant matters into account: road safety, concealment, deterrence, competition and regulatory co-operation were all germane. He did not omit

relevant matters: mitigation, subsequent conduct, family circumstances and hardship were expressly considered.

[94] Nor was the result otherwise an erroneous exercise of discretion. The sanction was severe, but severity is not the test. On the exceptionally serious findings, an indefinite order subject to the statutory route for later removal fell within the range reasonably open to a specialist regulator. The appellant's case demonstrates that another decision-maker might conceivably have selected a lengthy finite term; it does not demonstrate that the respondent's selection was plainly wrong, wholly unwarranted or manifestly inequitable.

[95] Accordingly, none of the grounds advanced permits appellate intervention. The alleged want of reasons is contradicted by the decision read as a whole. The guidance and case examples do not create a maximum. The mitigation was considered, not ignored. Non-attendance was relevant and rationally used. Deterrence was linked to statutory purposes. Regulation 57 was not treated as automatic expiry. The appeal is, in substance, an invitation to re-weight the factors and substitute a different sanction. The authorities prohibit that course.

Decision

[96] For these reasons, I shall sustain the respondent's plea-in-law, repel the appellant's pleas-in-law and refuse the appeal.

[97] The decision of the respondent dated 6 February 2026, insofar as it disqualifies the appellant indefinitely from holding LGV entitlement, accordingly, remains in force.

Expenses

[98] The respondent sought expenses if successful. The appellant initially indicated that he would seek expenses if successful but, when the matter was clarified, did not advance any separate basis affecting the ordinary rule. No special circumstances were identified which would justify departing from the general principle that expenses follow success.

[99] I shall therefore find the appellant liable to the respondent in the expenses of the appeal, as taxed.