



Northern Ireland
Assembly

Committee for Infrastructure

OFFICIAL REPORT (Hansard)

Transport Regulation:
Department for Infrastructure

21 October 2020

NORTHERN IRELAND ASSEMBLY

Committee for Infrastructure

Transport Regulation: Department for Infrastructure

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Members present for all or part of the proceedings:

Miss Michelle McIlveen (Chairperson)
Mr David Hilditch (Deputy Chairperson)
Ms Martina Anderson
Mr Roy Beggs
Mr Cathal Boylan
Mr Keith Buchanan
Mrs Dolores Kelly
Ms Liz Kimmins
Mr Andrew Muir

Witnesses:

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| Mr Chris Hughes | Department for Infrastructure |
| Mr David Mullan | Department for Infrastructure |

The Chairperson (Miss McIlveen): We welcome from the Department Chris Hughes, who is the director of safe and accessible travel, and David Mullan, who is the head of the transport regulation unit (TRU). You are both welcome to the Committee this morning. Thank you for coming. I ask you to make some opening remarks, after which members will ask questions.

Mr Chris Hughes (Department for Infrastructure): Chair, thank you. With your indulgence, I will make some brief remarks.

The transport regulation unit was set up to regulate the transport industry. Its aims are to ensure fair competition among operators so that those who are operating legally and fairly are supported and those who are not doing so are addressed and challenged; to improve road safety; and to minimise the impact of operating centres on the environment. The Department seeks to achieve those objectives through a process of education, which, given the impact of the COVID crisis, has been particularly important; through licensing operators, with a focus on licensing only those who are compliant with the regulations; and through taking regulatory action against licensed operators who are not complying with the regulations. The paper sets out what is required to demonstrate good standing, which relates to good finances, repute and establishment. There are criteria that need to be met to be considered of good standing.

The transport regulation unit has been addressing a number of historical issues, and those have been exacerbated by the impact of COVID-19. The range of issues is set out in the paper. There was the difficulty with holding public hearings. That coincided with the issue around the skill set required in order to hold public hearings. A lot of progress had been made on determining the locations for public

hearings, but that was negatively impacted on by the advent of COVID, which led to things being set aside.

We have an update to paragraph 18, which was correct at the time of writing, so, if you will indulge me, I will go through that. Paragraph 18 of the paper states that we were working through the outworkings of how to hold public inquiries. We have successfully held a public hearing. It was not an inquiry but a detention hearing, and it took place virtually this day last week. We have now established virtual hearings, but that requires the person concerned agreeing to the hearing. A deputy traffic commissioner from GB took the hearing, and it was successful, so we have now established that as a mechanism that we can take forward. That happened on foot of a lot of work that has taken place post COVID. The skills shortage meant that we sourced deputy traffic commissioners from GB, who agreed to come across to Northern Ireland to undertake the hearings. Those hearings were impacted on by COVID, but the deputy traffic commissioners have subsequently agreed to take them online or face to face, depending on the public health advice at the time.

In the meantime, the unit's other work has been on addressing the backlog. For example, licensing work has continued, although it has been slowed by COVID. Work on management information coming from the Driver and Vehicle Standards Agency (DVSA) has continued to progress despite COVID. It has been slowed down a bit, because DVSA has had to abide by public health advice and because people have been working from home. DVSA is also updating its IT system. That work is progressing, but it is progressing more slowly than it would have done before the pandemic.

That is a quick outline of the situation as it is. We are addressing the historical issues. Work has been going on. COVID-19 has come along, but we have progressed our work as much as possible, and we are still dealing with the issues.

The Chairperson (Miss McIlveen): Thank you very much. You referred a number of times to a skills shortage. What skills specific to and required for the role are you having difficulty finding people with?

Mr Hughes: David, would you like to answer that?

Mr David Mullan (Department for Infrastructure): Being a presiding officer is essentially a judicial skill. In GB, barristers, by and large, undertake that role. We looked at the requirement to preside, and pulling together the information from the casework is, in essence, a more straightforward administrative process. Ensuring that you have a fair and open hearing is important, however. The outcome of a hearing could result in the revocation of a licence and a loss of business, so it is a judicial process. Doing that, in a manner that is right and correct, is the skill set that is missing.

The Chairperson (Miss McIlveen): I did not think that there was a shortage of barristers in Northern Ireland.

Mr Mullan: No. I appreciate that *[Laughter.]*

The Chairperson (Miss McIlveen): Is there a lack of people coming forward to do the role? Is that more the issue than the availability of the skill?

Mr Mullan: No. We have not really commenced the process, because, first and foremost, we are looking at clearing the backlog. What we have to do is to consider what the role should look like. In the long term, that will be a requirement.

To deal with the backlog, we have access to experienced presiding officers in GB who can hear the cases. When we look back at the start of this process, the expectation was that there would be a very quick turnaround, thus allowing us time to look at what the future of the transport regulation unit should look like. The impact of COVID-19 has stretched that out. The original terms of engagement with the deputy traffic commissioners was for six months. Those expired, and we have had to renew them.

Mr Hughes: The nature of the process is judicial, so there has been criticism from the upper tribunal, not about the decisions but about the process. Having the skills of the deputy traffic commissioners is important. They are very familiar with the process, and, as David said, this is a process that can result in people losing their vehicle, livelihood or licence. The role is one for which we need the proper skill set.

The Chairperson (Miss McIlveen): OK. A number of years ago, there was a discussion about a strategic review of the TRU. Where does that sit at the moment?

Mr Mullan: We approached Business Consultancy Services (BCS) on that. At the time, it had a difficulty with putting it into its calendar. That is still something that the Minister wants done. The focus at this stage, however, is on getting the backlog of public inquiries cleared up as far as possible so that we can then understand what the requirements are going forward. The backlog is clouding the position, because we are looking at around 70 inquiries, whereas, on an ongoing basis, we should not be looking at any more than 24 a year.

The Chairperson (Miss McIlveen): You are in a situation in which we have a backlog and a lack of personnel. You cannot find a location in which to hold the meetings. There is clearly a problem that requires quite an urgent review rather than something that is kept in view for somewhere down the line.

Mr Hughes: There is no question that it is a matter that we want dealt with as quickly as possible. As David set out, there is a potential impact on the operation. When we have a backlog of cases, that has two potential impacts. The first is that people who are non-compliant with the regulations can continue to operate and thus undercut legitimate operators. That is an immediate concern. The second is that legitimate operators are potentially having difficulties with expanding. That is also an immediate concern.

Steps had been taken to put the review in place, but, unfortunately, there were difficulties at that stage. We are very conscious of the need for urgency. It is just that, in parallel, we have been focusing on addressing the issues that are on the table in front of us. I agree with you completely, however, that the review needs to be progressed as a matter of urgency.

The Chairperson (Miss McIlveen): OK. Can you talk to me about the most serious infringements (MSIs) issue and the information that comes to TRU, particularly from the mainland? When do those date back to? Have you got a considerable backlog? How many MSIs have you received from GB? Can you confirm that the information that you receive is accurate? How do you check that it is?

Mr Mullan: The transport regulation unit's work commences when we receive a referral or notification of wrongdoing. Over the past lot of years, the serious infringements (SIs) and very serious infringements (VSIs), which are other the categorisations, have been coming across on an individual, case-by-case basis. What we have found out — this predates my time at TRU — is that the MSIs had not been notified. That seems to stem from 2016, when the classifications were put in place.

We have engaged with the DVSA to try to understand, first and foremost, why those infringements had not been notified. It relates to the fact that, in GB, the assessment of those infringements tends to happen in DVSA, and a case file is then produced for the traffic commissioner. In Northern Ireland, the transport regulation unit is responsible for assessing the information as well as then calling the public inquiry. In essence therefore, in GB, the information was not being presented to the traffic commissioner on a case-by-case basis, but, in Northern Ireland, it should have been.

The DVSA has since presented us with a 10-year MSI report. I confess that we are still working through the detail of that. We have received a 10-year report, which contains just short of 7,000 MSIs. That is a very significant volume and will affect approximately 850 operators. We have not yet got to the stage of going through that information to determine, for example, how many of those operators have since stopped trading, because, as I said, this is a 10-year report.

We then have to assess how we will use that information. Our initial reading and understanding of the regulations is that there is no statute of limitations. In effect, they could all be used in a hearing. We need to seek input from the Departmental Solicitor's Office (DSO) on that to see what we can and cannot use. There is a weighting issue, so we have to determine how much weight we attach to the older items. For example, if we have an operator who has not had an MSI in five years, any material prior to that will carry much less weight than it would for an operator who is currently receiving MSIs.

As I said, we have received the report. We are currently doing a data-cleansing exercise on it, because, for a lot of the information coming across, there is inconsistency in operator names, operator numbers and so on. Once we have established a consistent approach, we intend to speak with the trade organisations, which are the Road Haulage Association (RHA) and Logistics UK, and the

Departmental Solicitor's Office — not necessarily in that order — to try to understand how we will use the information.

The Chairperson (Miss McIlveen): Those figures are quite astounding.

Mr Mullan: They are.

The Chairperson (Miss McIlveen): Is there a lack of resource in your unit to deal with this?

Mr Mullan: We have not yet got to the stage of assessing that. If things move forward, we expect to create a referral on an operator-by-operator basis.

Mr Hughes: It is always the case that you will potentially do more with additional resources. There has been an increase in staff numbers, but this is more an issue of getting access to the information and then prioritising it. You can do more with more people, but the process is —.

Mr Mullan: There is also a potential bottleneck. If you have more people processing information on the administrative side of things, that impacts on decision-making.

The Chairperson (Miss McIlveen): That goes back to the point about the review about what you do and how you do it. It seems that, no matter what you do at the moment, you are going to encounter some kind of bottleneck.

Mr Hughes: Potentially, yes. That having been said, we anticipate a timescale of about six months for addressing the issues that are on the table. Although there are numbers to work through, for the cases that are live at the moment, we had got to the stage of putting dates in diaries, and we would have progressed the cases if it were not for the issues around COVID. There are two issues to be dealt with: the steady state, which, as David set out, is potentially two notifications a month; and the backlog, which we are breaking down. We think that we can work through the backlog of cases that are on the table in about six months, and we have successfully established that virtual hearings can take place. One of the issues with a virtual hearing is that it requires the agreement of the other party, because the person is entitled to a face-to-face hearing. That is right, because these are weighty matters. Some of this is therefore not within our control. We can put in place all the arrangements that we are able to, but, regardless of what we do, potential stumbling blocks exist.

The Chairperson (Miss McIlveen): There are hauliers who are based in Northern Ireland yet registered and licensed elsewhere — for example, in Bulgaria — and are therefore unregulated, yet we have hauliers here who are subject to some regulations that make it quite difficult for them to operate. How can they compete with those who are unregulated? Surely there is an unfairness in the system.

Mr Mullan: Yes. The issue is known as "flagging out", where we have people who are operating in Northern Ireland but with a licence and plates from another country in the EU, such as Bulgaria. You are absolutely right. The transport regulation unit looks only at licensed operators, so the guidance and the legislation gives us the authority to take action only against licensed operators. With the other operators, it is an enforcement issue.

The hearing last Wednesday that Chris referred to involved one such incident. The Driver and Vehicle Agency (DVA) had detained a vehicle on the suspicion that it was being illegally used — flagging out — and the outcome was that the vehicle is to be disposed of. That takes that vehicle off the road, and it is through that mechanism that we will provide a deterrent to rogue operators and provide assurance and support to legitimate operators.

The Chairperson (Miss McIlveen): How can we create a system that is fairer to those who are operating within the law?

Mr Hughes: That is the issue: both prongs need to be tackled. When operators are in our system, that is a good thing, and they can operate legitimately. If they are not, it becomes an enforcement issue.

Mr Hilditch: You are very welcome. Things do not appear to be good, going by the paper, which is very negative and states that things are not in place at various levels and so on. You say that you are

going to return to having inquiries in November, which is only two weeks away. How confident are you of that happening?

Mr Mullan: We are aiming for the week commencing 23 November. During lockdown, one item that we focused on was prioritising cases and pulling together information. Prior to lockdown, we had undertaken a lot of work on pulling together case files and so on. Unfortunately, as time progresses, the situations with operators change, so you have to revisit that work, which is incredibly frustrating but a necessary evil.

We are now in the position of case files having been presented to the presiding officers, who will come back with final changes. We have to give statutory notice of 28 days to transport managers and 21 days to operators. The call-up letters have been prepared, and, once we get the nod from the presiding officers that they are content with the material in them, they will be sent out. We have provisionally booked the location for hearings on 23 November, and we are looking to start the virtual hearings in the week commencing 14 December.

Mr Hughes: David has done quite a bit of work to ensure that the hearings are compliant with the public health guidelines. As of this morning, we are content that we will be able to progress to those hearings.

Mr Hilditch: Before COVID, there was a difficulty with getting locations, so it is an ongoing situation.

Mr Hughes: It is, yes.

Mr Mullan: We have now got agreement with Land and Property Services (LPS) and have secured third-party accommodation. Before COVID, we had an agreement with the Northern Ireland Courts and Tribunals Service (NICTS) to use its locations. The courts were then shut down, and they have their own backlogs, so, for the time being, the courts are not available to us.

Mr Hilditch: Would being able to use the courts help you in the long term, post COVID?

Mr Mullan: That is to be determined.

Mr Hughes: If we can get access.

Mr Mullan: Yes. It is about whether we can get access. We need a hearing —.

Mr Hilditch: Could the hearings and inquiries be held in hotels around the country or anywhere like that?

Mr Hughes: There are specifications that need to be met for the accommodation. It is a hearing, so you need —.

Mr Hilditch: *[Inaudible.]*

Mr Hughes: Yes. That is the issue, which, of course, makes courts ideal. Work had been taking place on finding a long-term solution, and we had been making good progress on that until COVID happened. When COVID happened, the focus was on trying to get hearings up and running. What we are doing is not a long-term solution, but it allows us to start the hearings.

Mr Hilditch: Are there appeals after the hearings?

Mr Mullan: Appeals are heard by the upper tribunal. They are heard in court.

Mr Hilditch: They are heard in court.

Mr Mullan: Yes. The judiciary looks after those.

Mr Hilditch: Finally, you seem to have been looking to GB to see what is going on over there. Have you learnt anything that could be introduced here to help the situation?

Mr Mullan: Online hearings are the key thing that we have learnt from the Traffic Commissioners for Great Britain. We are in touch with that office quite regularly. One of the things that we are looking at now is to do with the notice that is given to operators seeking their agreement to call them to a public inquiry, which Chris mentioned earlier. We are also looking at whether, in considering the circumstances of a case, we can call operators to a virtual hearing if there is a road safety risk.

Mr Hilditch: Are other places suffering backlogs too?

Mr Mullan: Yes. They are.

Mr Hughes: The Traffic Commissioners for Great Britain provided training to the team to help to embed some of the learning. We are taking opportunities from that learning to try to make things run as smoothly as possible.

Mr Hilditch: Do you intend to install traffic commissioners in Northern Ireland, or will you just keep bringing those folk over from across the water?

Mr Hughes: That forms part of the review that the Chair referred to.

Mr Hilditch: OK. Thank you.

Mr K Buchanan: Thank you, Chris and David. I will go back to the start. In layman's terms — I should say "layperson's terms" — if I wanted to operate 10 vehicles tomorrow, what would be the normal process, briefly?

Mr Mullan: An application would be submitted. In that application, you would be asked to provide various pieces of information about how you intend to practise, where you intend to be and so on. We would assess a number of those factors, such as whether the operating centre is suitable for 10 vehicles; whether you are of good repute and fit to become a goods vehicle operator; whether you have the financial resources to look after and maintain your vehicles; and whether you have sufficient processes in place. In some instances, depending on the type of application that you put in, there is a requirement for professional competency, which would require you to have a transport manager. If you are qualified, you can be the transport manager. Otherwise, you may need to nominate one.

All of that material is assessed. In some instances, it is very black and white. You would be asked, "Do you have the financial resources, yea or nay?". In other instances, there will be a detailed investigation. You would be expected, for example, to make us aware of whether you have any convictions. We also go to statutory bodies and ask for information about you. If that showed that you have convictions that you had not declared, that would raise an amber flag for us.

Mr K Buchanan: Sorry for cutting across you, but does the applicant have to be the person who owns the business?

Mr Mullan: Yes. The licence is given to the legal entity, whether that is an individual, a partnership or a limited company.

Mr K Buchanan: What is the normal timeline for that, approximately?

Mr Mullan: We have a target of 40 days. Last year, we were consistently within that target, but it has slipped to about 41 or 42 days during COVID. It is important to point out that we have still processed 327 applications so far this year, which is about average. We are slightly outside the average of 40 days, but, considering the current circumstances, that is not so bad.

Mr K Buchanan: I am looking at the table in your paper. It shows "Non-Public Inquiry" and "Public Inquiry" for applications.

Mr Mullan: Yes.

Mr K Buchanan: What is the definition of "Application" there? I see that there have been 38.

Mr Mullan: Can you say that again, please? Sorry.

Mr K Buchanan: The table shows "Non-Public Inquiry" and "Public Inquiry". You have 10 applications for non-public inquiries and 28 for public inquiries, which gives a total of 38. What is the definition of "Application"?

Mr Mullan: An application is when an individual has either sought to create a new licence or vary an existing one. If you want to vary a licence and you want an extra 15 vehicles, we will look at how you have managed your licence thus far. If you are a good, compliant operator and we do not have any issues, that might be approved immediately. If not, it will go through a decision-making process by which we will try to assess the application.

Mr K Buchanan: Let us say, in simple terms, that I broke the rules. Do you put any emphasis on the application process or regulatory process? I know that they are both important, but which is more important in the Department? Are you weighting them?

Mr Mullan: We have a direction on that whereby we look, first and foremost, at road safety concerns. That is our number-one priority, then applications. We look at those applications on a date-by-date basis.

Mr K Buchanan: Is that done by two separate teams in the Department, or by the same people?

Mr Mullan: It is done by the same people. Once it goes to that level of decision-making, it is done by the same group of people.

Mr K Buchanan: What is your capacity for that, as in the number of staff who are doing it?

Mr Hughes: Well, we have met the targets, so —.

Mr Mullan: Are you referring to the capacity to look after the hearings?

Mr K Buchanan: Yes.

Mr Mullan: Sorry. Yes; as I said, it is the same team that looks after both. We have a number of caseworkers who lead in pulling together the information. Then there are, essentially, three decision-makers, including me and two deputies.

Mr K Buchanan: So the number of staff has not changed over the past number of years.

Mr Mullan: It has changed.

Mr K Buchanan: In what way?

Mr Hughes: It has gone up.

Mr K Buchanan: It has gone up?

Mr Mullan: Yes.

Mr K Buchanan: More?

Mr Hughes: More.

Mr K Buchanan: For what reason?

Mr Hughes: To fill vacancies.

Mr K Buchanan: When did you say that you would have those inquiries completed? Was it within six months?

Mr Mullan: We had anticipated six months initially. Looking back to November or December last year, our expectation was six months. A number of the hearings can be conjoined. For example, if you have

an application from an operator, but there is concern that it is actually a front for another operator, you might call both of them together. Therefore, although 70 operators are being called to public inquiry, in one that we are currently looking at, three of those operators are being called together. To answer the question, our expectation is around six months. That may well change, depending on the public health situation.

Mr K Buchanan: This is my final question, Chair. What were those figures like prior to COVID? Obviously, there is no doubt that COVID has created a problem. What were those figures, approximately? I do not need exact figures. What were they like prior to COVID?

Mr Hughes: Which figures?

Mr K Buchanan: The regulatory figures.

Mr Hughes: The caseload?

Mr K Buchanan: Yes.

Mr Mullan: I thought that I actually had them there. They were around the 50 mark, so they have gone up a bit. We have also taken some off the list or changed the priority classification. The expectation is that some of those in-chamber preliminary hearings, which are not public inquiries, are more of an education piece. The likely outcome of regulatory action would be quite minimal. In some instances, in the review of those, the information that relates to that operator might have changed, and we have increased that. In some instances, you have applications that are actually no longer being pursued, and so forth. That was part of the exercise in November and December to try to get a clearer picture of where we are and where we are going.

Mr Hughes: You do have the number that have come in since COVID, do you not? They have been coming in at about two a month. Is that the —.

Mr Mullan: Yes.

Mr Hughes: They come in at a rate of around two a month. That is what comes in on a regular basis, so, while we are delayed, that is what it starts to increase by.

Mr Boylan: Thank you very much for your presentation. Most of the stuff has been touched upon, but I just want to follow up on some of the things. David, you were saying that there were roughly 12 per year —.

Mr Mullan: Sorry: we are looking at two a month, so it probably closer to 24 per year.

Mr Boylan: As regards this year, you had one last week. Had there been any before that?

Mr Mullan: No. Last year, in November, we had one public inquiry and two detention hearings. That was a good litmus test, obviously, for staff who had come in and may have been unsure about the procedures and so forth. Then, at the start of this year, we were driving forward to implement public inquiries. Unfortunately, that was further delayed, so we have not had any.

Mr Boylan: Just roughly for ourselves and our understanding on that, I want to ask about the MSIs as well, because the figures were quoted there. Just in general, what are the offences, and what are the worst?

Mr Mullan: In general, the worst are the likes of serious road traffic MSIs. We are talking about vehicles that are not roadworthy or individuals who consistently breach drivers' hours, for example. If you have a consistent breach of drivers' hours, you potentially have tired drivers on the roads. That is at the more serious end. Some of them are financial. Some involve questions over legal entity, where a partnership publishes accounts under a limited company and so forth. The expectation is that there would be a correction to those details, as opposed to regulatory action.

Mr Boylan: What about the physical side of the vehicle stuff? Is that classed as minor?

Mr Mullan: No, you can have serious, very serious and most serious issues with regard to the vehicle itself. Obviously, if a vehicle is stopped on the roadside, the DVA can issue a prohibition notice so that a vehicle with a serious defect is not on the roads.

Mr Boylan: No, I know that from the previous Committee. It was just that the Chair mentioned —. The MSIs, definitely. We regulate, and we have licences, but there are other operators out there, registered somewhere else, who do not have the same things. It happens in the taxi industry here, as well; you can regulate or go after only the people who are part of the licence system. That is where we get most of the complaints from the industry, to be fair.

I will just follow on with two points. If anybody wants to expand their business — I was dealing with one recently — do you need to go out and visit the site?

Mr Mullan: The honest answer is that it depends on the circumstances. Every case is slightly different. We can request the DVA to do a compliance audit, which is a site visit to look at not just the physical make-up of the site but the papers — whether they are keeping the right records, and whether those records are appropriate.

Mr Boylan: Obviously, there is a difficulty in doing that because of COVID. I have had a few phone calls about that. I may come back to you in relation to that. There are still people out there who definitely want to expand.

Just finally, in terms of the inquiries, there is a review to take place. You mentioned barristers and the judiciary. Do you need to shore up the team with resources?

Mr Hughes: I do not want to pre-empt the outcome of that. That will become clear, I suppose. If I were to say now —.

Mr Boylan: It is in respect of the 7,000 cases and —.

Mr Hughes: We need to look at the skill set; there is no question about that. We are looking at how we access that. I just do not know what the outcome of that will be yet.

Mr Boylan: OK. Thank you.

Mr Beggs: Thanks for your presentation. The information that you are reporting to us is very concerning. For clarity, is it correct that you had three hearings in 2019 and that 70 are awaiting a formal public hearing?

Mr Mullan: That is correct.

Mr Beggs: And you normally expect two new cases to come in per month.

Mr Mullan: That is correct.

Mr Beggs: What is your projection of when we will be up to date?

Mr Mullan: Obviously, we are looking to prioritise cases that are there —.

Mr Beggs: No; my question is this: when will you be up to date so that you will address things in a timely fashion?

Mr Hughes: That depends on the continuing COVID crisis. That has delayed —.

Mr Beggs: What about if COVID was not restricting you?

Mr Mullan: Our expectation would be six months.

Mr Hughes: Six months.

Mr Beggs: OK. I am glad to hear that.

Mr Mullan: Sorry, just to clarify —.

Mr Beggs: I am trying to understand how we got to that situation. I do not understand. How did we get to that situation? You are meant to be regulating all the operators so that there is not unfair competition from illegal operators, and allowing legal operators to expand where appropriate. You have not been doing it; you have not been doing your job.

Mr Hughes: There have been a number of issues have compounded this, such as access to premises and access to skills. It would be —.

Mr Beggs: How long ago did you lose your premises?

Mr Hughes: The premises were —?

Mr Mullan: 2018.

Mr Hughes: Late 2018.

Mr Beggs: Two years ago.

Mr Hughes: Yes.

Mr Beggs: Why did you not go out and rent something?

Mr Hughes: The premises need to meet certain requirements. The nature of this is that you have judicial-type hearings; you have to have a hearing —.

Mr Beggs: It takes two years to get a suitable property?

Mr Hughes: It has done.

Mr Beggs: I find that quite unbelievable. How long have you not had the skills in-house to carry out the hearings to the required standard?

Mr Hughes: The hearings have continued. There has been criticism from the upper tribunal about some of the processes. That has not stopped hearings taking place, but it —.

Mr Beggs: You have recently started to engage with deputy commissioners from elsewhere. Prior to that, you did not have staff with the required standard. Is that correct?

Mr Hughes: It became clear from the feedback from the upper tribunal that there were issues that needed to be addressed as far as skills were concerned.

Mr Beggs: What were the issues?

Mr Hughes: It was the nature of the process, rather than any of the findings.

Mr Mullan: Lack of adequate reasoning and investigation within the hearing, the decision-making process itself and uncertainty as to who the decision-maker was. It all falls around the issue of fairness in the hearing. That is where we have then looked at the judicial route.

Mr Beggs: Is it reasonable to think that, if you had to go elsewhere, you did not have the skills in-house? Is that a reasonable assumption?

Mr Hughes: Well, taking account of those criticisms, that was the conclusion.

Mr Beggs: OK. So my question is: how long have you not had the skills in-house?

Mr Hughes: We have not moved to having people with that particular skill set. We have not had those people.

Mr Beggs: How long? Since when?

Mr Mullan: Since the legislation was put in place, the decision-making process sat with administrative grades.

Mr Beggs: So, in four years, you have not had —

Mr Hughes: No, since 2012.

Mr Mullan: It was 2012.

Mr Hughes: Yes, 2012.

Mr Beggs: You have not had the skills.

Mr Mullan: I would not say that we have not had the skills.

Mr Hughes: Yes, there is a skill deficit that we are now looking to address. The process has run; it has just been criticised in relation to skills. Yes, there has been a shortfall in skills, but I would not say that we have not had the skills. It is probably a fairer reflection to say that we have not had all the skills, now that that has been identified to us from the upper tribunal.

Mr Beggs: I would prefer that you were more frank. The criticism has clearly been because decisions have not been appropriate and you have had to go elsewhere. Is that not correct?

Mr Hughes: No, that is not correct. There is a difference between the decisions being appropriate and the process. The decisions themselves have not been subject to criticism. The process that got us there has been; there is a difference. Just to be very clear, the lack of skills has not stopped progress. It is an issue that needs to be addressed as we try to make the thing as fair and robust as possible.

Mr Beggs: What is wrong with the process, then? You say that it is not the people, it is the process.

Mr Hughes: It is the issues that David outlined.

Mr Mullan: Take a couple of the example cases that have led to criticism from the upper tribunal. The upper tribunal has not sought to overturn the Department's decision. It has sought to criticise the decision-making process and how we have got to the decision. To take, for example, the backlog of 70 cases, unfortunately, a lot of those issues go back a number of years. We want to ensure that we take a very clear and controlled step forward with regard to those hearings. We do not want to rush through 70 hearings and get them out of the way quickly so that we are clear, but then be subject to serious criticism from the upper tribunal —.

Mr Beggs: I have not heard what was wrong with your process.

Mr Mullan: The process itself? Nothing. It was just within the decision-making — within the hearing, it was determined —.

Mr Beggs: Earlier on, you said that there was nothing wrong with the decisions or the skills of the people and that it was the process. Now you are saying that it is not the process. I am confused.

Mr Mullan: No, sorry. When we go into a physical hearing, just as in any judicial hearing — these are civil hearings. The criticism from the upper tribunal has been around how the decision and determination were got to.

Mr Hughes: To clarify, a procedure is set out, which is what we are referring to when we talk about the process. There is a defined procedure, which is what we were calling the process, and that has not been subject to any criticism. That is — it just simply has not. Within that, it is about how the decisions

were taken. It is almost a subset of an operation in that. The process is fine, but the decision-making within that has been the issue that has been subject to criticism.

Mr Beggs: I am more confused than I was when we started. Madam Chairperson. In terms of the seriousness of this, as others have said, some of the legal operators have been involved in people trafficking; is that correct? They have been operating from Northern Ireland, and the system has not worked here.

Mr Hughes: They were not licensed here.

Mr Mullan: In any of the investigations that we have been made aware of, none of the operators have been from Northern Ireland.

Mr Beggs: Drivers from Northern Ireland, then?

Mr Mullan: Yes.

Mr Beggs: Could there have been a regulatory role in improving the situation?

Mr Mullan: The drivers are not regulated by us.

Mr Hughes: To be honest, the issue there is that if somebody decides to act illegally and to indulge in those issues, we can identify a company that is, potentially, acting in that way, but if an individual driver decides to engage in illegal practices, with the horrendous outcome that that had —.

Mr Beggs: Have some companies been involved in illegal activity, whether it is that or other criminal activity, that you have not been able to deal with?

Mr Hughes: None that are licensed here.

Mr Beggs: What about the ones that are not licensed? Are we able to —?

Mr Hughes: They are being dealt with in the jurisdiction where they are licensed, which is the Kent Police.

Mr Mullan: That particular case is with Essex police. As for other operators, there have been a few recently concerning drugs at Dover. That was linked to a driver from Northern Ireland. We engage with the authorities to find out if there is anything that the Department needs to be aware of. Have we a licensed operator link to this? Quite often, when there is National Crime Agency involvement with ongoing investigations, they will give us very little. Local PSNI would make us aware as to whether or not there is anything that we need to be aware of. In all those recent examples over the past few months, there has been nothing linked to licensed operators.

Mr Hughes: We do not have concerns that there are any bits of process that are not being operated by us that would have stopped those issues. If there were, as a human being you would —.

Mr Beggs: A final question, then. You indicated that virtual meetings can occur and that that will help you to deal with the backlog. That occurs only when both parties agree to it. If you are potentially taking action against someone, presumably they are not agreeing to it, so are all the illegal operations or areas where you have concern really not being addressed by the virtual system, and when will they be addressed by public hearings?

Mr Mullan: We have established not only the process for the virtual hearings but the mechanisms to facilitate, in the current times, a face-to-face hearing, and we have presiding officers happy and content to come across. We have locations for that, and we have engaged with the PSNI and with Land and Property Services to make sure that we are meeting all the regulations. We are going to engage with the Traffic Commissioners about their lessons learned. There is, potentially, an opportunity to work with operators. Where we have a serious road safety concern, there is an opportunity to disqualify until they can make themselves available at a hearing.

Mr Beggs: One final question. Given the backlog and the work that is ongoing, can we justify having our own trained commissioner so that everything happens on a timely basis going forward? What is the comparable cost of sub-contracting that in?

Mr Hughes: That would be a matter for the review.

Mr Beggs: Your view is —

Mr Hughes: Sorry, that would be a matter for the review.

The Chairperson (Miss McIlveen): I am mindful that we need to be out of here by 1.00 pm, but we have three other Members who wish to ask questions.

Ms Anderson: Thank you for the presentation. I can understand Mr Beggs's frustration, because I think none of us realised that the skills shortage went back eight years. Is that what I picked up, from 2012?

Mr Mullan: No. It has always been set out within the policy and practice that it is an administrative function to preside over those hearings. The lesson learned over time was that the procedure within a hearing to give fair, open hearings was very much a judicial one. The criticism from the upper tribunal is also there to support that thought. Over the last while, then, a mechanism has been put in place to identify how we best take forward those hearings in a manner that ensures that they are fair, open and meet all the requirements, thereby reducing the opportunity for appeal. An individual has a right to appeal, and that will include an appeal claiming that the Department's decision, ultimately, was wrong. Really, however, an appeal will be around whether they got the opportunity for a fair hearing. Engagement with somebody trained as a barrister or the judiciary strengthens the Department in that regard.

Ms Anderson: All that goes without saying. I was listening earlier to the response that was given about 2012, and here we are in 2020. The Chair asked about the skills shortage, but I think that was further information that you got about that.

How do you have a fair, open and transparent manner when you have not had premises since 2018? Where do you operate from?

Mr Mullan: We have been using premises belonging to other Departments. We have been using Cleaver House; Clarence Court for non-public inquiries; and Killymeal House. Unfortunately, access to those is first and foremost for their own Departments. As their own business ramped up, our availability suffered as a result.

Ms Anderson: How close are you to securing premises?

Mr Mullan: On the short-term front, we have now agreed with Land and Property Services a site in Belfast for hearings on a fairly regular basis. LPS is now taking forward the long-term view. The security assessment of Clarence Court determined that it is not suitable, so we have to look elsewhere.

Ms Anderson: You are responsible for licensing and regulation of heavy goods vehicle operators. Do you anticipate that the role is going to change due to Brexit?

Mr Mullan: No. We will regulate based on how an operator conforms to the law. As the law changes, the expectation is that they will conform to the new law. If we get referrals, regardless of what the infringement is, whether that is against EU law or otherwise, we will take action against that.

Ms Anderson: Do you know what drivers need to do to drive professionally in the EU if there is a crash-out Brexit?

Mr Hughes: That is a driver licensing — to be honest, until we know more clearly what the outcome will be, I do not know.

Ms Anderson: Is there any interrogation of that? I know that hauliers and others are very deeply concerned about the fact that they do not understand what they may have to do in a few weeks' time to drive professionally in the EU. Is any understanding being shared with them about what they may have to do?

Mr Hughes: That is a matter that will be an outworking of the negotiations, so —.

Ms Anderson: If there is a crash out, what will you do to inform hauliers of what they need to do?

Mr Hughes: We would need to see exactly what the crash out looked like, so at this point —.

Ms Anderson: If there were a crash out, there might be a few weeks between a crash out and hauliers receiving that information, a few months or longer. Hauliers need to know.

Mr Mullan: From a transport regulation perspective, we are not involved in policy or legislation. It is more about how we take action against non-compliant operators, regardless of what the laws are at the time.

Ms Anderson: How can they be non-compliant if they do not know what the law is? We know that the British Government have not put a focus on the transport sector.

Mr Hughes: One of the issues about transport in general is, of course, that, by its nature, it moves. The impact of this will depend on what the UK Government agrees or whatever. To be honest, I do not know.

Ms Anderson: Hauliers do not know either.

Mr Muir: A number of my questions have already been dealt with, particularly by Mr Beggs. I think that the backlog is an issue of concern. Lots of hauliers have made contact with me around that, particularly as a result of the stress that they have been under as a result of COVID-19 and then also the worries around Brexit, which Ms Anderson has touched on. I think that it is really important that that backlog is addressed. Since this pandemic started, all of us have been able to adapt to online communications. Mrs Kelly is online, and we have all understood what Zoom is. Why was there such a delay in convening those hearings online? I understand that you have to get permission from the different parties to do it, but why was there such a delay in being able to convene that? We as MLAs and constituents were able to get online within days to do our business, but it seems to be that there has been a significant delay around that.

Mr Hughes: I think that that is because of the nature of the process that we need to go through.

Mr Mullan: Yes. We have obviously sought advice throughout, and we have kept an eye on the advice from the local Courts Service and from the office of the Traffic Commissioners. They have moved forward very carefully in GB, and I am very conscious of the fact that, with the concerns and issues that we had around face-to-face hearings, it was a greater leap to move into the virtual hearing and the concerns that that brought. If the office of the Traffic Commissioners has those concerns, we need to pay attention to those.

Mr Muir: I understand that, but courts were able to meet virtually, and there is allowed to be virtual engagement with prisoners taking evidence and all sorts of stuff, so deliberate effort was made to be able to convene online hearings. I am not leaving here with the impression that there is a real urgency to deal with these situations. That is my concern around that, and I say that with genuine concern. There is a backlog here. Hauliers are facing real financial strain, and we really need to be reassured that concerted efforts are being made to turn this around.

Mr Hughes: I can assure you that there has been every concerted effort. We are conscious of the fact that the consequences of hearings are very serious. They have very serious implications for road safety, and they also have very serious implications for whether we are supporting our industry, to be fair. The process that we need to go through to ensure that that is worked out has to be absolutely watertight. If the process has any questions about its fairness or validity, then that is an issue. We also needed to get the casework ready. I can assure you that, while I would have preferred that things had happened more quickly, they have happened as quickly as we can make them happen.

Mr Muir: Chair, it will be important to review how this has progressed in a number of months' time. I have a worry that this is going to run and run.

Mrs D Kelly: I will try to be brief. *[Inaudible]* involved in illegal activity, such as people trafficking and illegal waste. Anyone who was interested in human rights and trying to close down those who would traffic in people would want all of the statutory agencies to bring their full might down upon the guilty. What assurances can you give to the public that you will do all in your power, whether the drivers and haulage companies are licensed here or elsewhere, to put these people out of business?

Mr Hughes: I will go back to the risk assessment that took place when we were identifying the information that is made available to us. What we are aware of, we prioritise. We look at the safety issues. If there was immediate concern about a particular operator acting illegally, that would become a police matter.

Mr Mullan: Yes, first and foremost a police matter. The conviction would result in an instant loss of repute, and that is the point in time when an operator would lose its licence.

Mr Hughes: We are not privy to information that would cause concern about people traffic, drug smuggling and illegal waste that we are sitting on; I can assure you of that. As we become made aware, as regulators, we have a regulatory role rather than an enforcement role.

Mrs D Kelly: If a haulage company had more than one lorry, and one lorry was found to have been used in criminal activity, would the agency or the Department make a concerted effort to share that information across all of the other bits of the Department to inspect the vehicles and drivers who are working for the company that has found to be in breach, if that makes sense?

Mr Mullan: In that case, the operator has essentially made the breach, as opposed to just one driver per se. Obviously, there would be due process to find out what knowledge was had and so forth. However, again, the regulation here is on the operator, and the expectation is that the operator will train and manage drivers. That is where we would look for regulatory action.

Mr Hughes: Obviously, it would have an impact on the operator's repute. One of the criteria that they are required to meet is to be of good repute. If something like that happened, it would immediately raise a question about their repute. An instance like that would be prioritised.

Mr Mullan: Absolutely.

Mr Hughes: I do not think we have had that, David?

Mr Mullan: No, I do not believe so.

Mr Hughes: Obviously, that would send a red flag. There are mechanisms whereby the impact on repute can be picked up by the licensing process.

Mrs D Kelly: I do not think that that has been my experience. I know some hauliers who have been fined, particularly for illegal dumping, and I note that they are still in business. I do not know how that has happened. We can come back to that at another time.

The Chairperson (Miss McIlveen): Thank you very much for coming this morning. I think —.

Mr Boylan: Chair, just a quick point?

The Chairperson (Miss McIlveen): Very quickly.

Mr Boylan: It is an important point. Under the EU statute, there is an operator assessment process for the most serious infringements. I know that Ms Anderson asked about that. We need to be clear on all of that.

Mr Mullan: Yes. Where you have an MSI, it is essentially a loss of repute. However, the EU regs say that you have to undertake an administrative process to determine whether putting someone out of

business is proportionate to the offence. That is all the casework, and that is why we need to be so careful when we are in a public inquiry to make sure that all of that is measured up and weighed up.

The Chairperson (Miss McIlveen): Thank you, again, for coming this morning. I think that Members, rather than being reassured, probably have more concerns. We will return to this in the next number of weeks. Thank you for coming this morning.