



REDACTED PUBLIC VERSION

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(Separate redacted versions have been issued to the respective operators).

TRAFFIC COMMISSIONER FOR SCOTLAND

GOODS VEHICLES (LICENSING OF OPERATORS) ACT 1995

VALENTINE HAULAGE BONNYBRIDGE LTD – OM1124054

MARTIN WILLIAM VALENTINE T/A DENVAL HAULAGE – OM1137786

WILLIAM WRIGHT T/A WMW CONTRACTS – OM0031107

MARK ALEXANDER VALENTINE – TRANSPORT MANAGER

WILLIAM WRIGHT – TRANSPORT MANAGER

PUBLIC INQUIRY HELD AT EDINBURGH ON 1 and 8 MAY 2018

DECISION OF THE TRAFFIC COMMISSIONER

Background – Valentine Haulage Bonnybridge Ltd

1. **Valentine Haulage Bonnybridge Ltd** (hereinafter “Valentine Bonnybridge”) (SC43277) was incorporated on 18 September 2012. The current registered office is 82 Reilly Gardens, High Bonnybridge, Bonnybridge, FK4 2BB. The directors since incorporation are Mark Alexander Valentine (b.1973) and Jacqueline Ann Valentine (Wright) (b.1975). They are the shareholders.
2. On 22 January 2014, Valentine Bonnybridge was granted a standard national goods vehicle operator licence with authorisation for 2 vehicles and 2 trailers. The two vehicles currently specified are PK60 SZU and BG62 SWV. The operating centre is at Unit 1, Boghead Garage, Broad Street, Denny, FK6 6DY. Maintenance is carried out by Scania GB Ltd, Thornbridge Yard, Laurieston Road, Grangemouth, FK3 8XX. At time of grant the transport manager was Mr William Wright. Director, Mr Mark Valentine, was nominated as transport manager in September 2016. Mr Wright removed himself from the licence on 14 February 2018.
3. Prior to grant of the limited company licence, Mark Valentine and Jacqueline Wright (now Valentine) held a partnership licence authorised for one vehicle which was surrendered on

grant of the company licence. The company licence application was considered at a Preliminary Hearing on 15 January 2014 when I had to be satisfied including as to finance. A finance condition was put on the licence and later removed. A warning letter for an S marked prohibition of 26 October 2015 was issued on 3 March 2016.

4. Valentine Bonnybridge's performance history since grant in January 2014 includes 2 immediate prohibitions issued on 19 December 2017 to vehicle and trailer (ABS and stop lamp issues) and 100% pass rate at annual test.
5. In December 2017, my Office had to write to Valentine Bonnybridge querying whether excess vehicles were being used and that formal variation was required to increase authorisation. A variation application to increase the authorisation to 4 vehicles and 6 trailers was received by the Central Licensing Office at Leeds on 21 December 2017. On 28 December 2017, Leeds had to write asking for further information and posed this question "It has come to the attention of the Traffic Commissioner that you have been using vehicles exceeding your current authority. Please confirm what vehicles you are currently using and provide your comments with regards exceeding your authority." Valentine Bonnybridge instructed Glasgow solicitors, Beltrami & Co at this point. Under cover of an e-mail of 23 January, Beltrami & Co sent a letter from Mr Valentine of same date. The relevant content of that letter is set out later in this decision.

Martin William Valentine t/a Denva Haulage

6. Sole trader **Martin William Valentine** (b.1975) who trades as Denva Haulage (hereinafter "Denva") of Denva House, Dalnair Road, Bonnybridge, FK4 2HA, was granted a standard national goods vehicle operator licence on 4 June 2015. The operator has authority for the use of 1 vehicle and 1 trailer. The vehicle specified on the licence is SW62 XHG. The operating centre is at Unit 1, Boghead Garage, Broad Street, Denny, FK6 6DY. The nominated part time external transport manager is Mr William Wright (of more below).
7. Companies House records show that a company Denva Haulage Ltd (SC584789) was incorporated on 4 January 2018. The directors from date of incorporation are Mr Martin William Valentine (b.1975) and Anne Marie Denholm (b.1964). Maintenance is carried out at 6 weekly intervals by Scania GB Ltd, Thornbridge Yard, Laurieston Road, Grangemouth, FK3 8XX.

William Wright t/a WMW Contracts

8. Sole trader **William Wright** (b.1949) of 20 Bonnyview Gardens, Bonnybridge, FK4 1PW was granted a standard national goods vehicle operator licence on 14 December 1992 with authorisation for 2 vehicles and 1 trailer. The operating centre is at Unit 4, Boghead Industrial Estate, Broad Street, Denny, FK6 6EH. He is his own transport manager as well as being transport manager for the Denva licence. He was transport manager for Valentine Bonnybridge (see above). A vehicle attracted an 'S' marked prohibition in May 2004 but no roadworthiness prohibitions since. The test history over 5 years was 19 passes 1 PRS 3 fails; over last 2 years 3 passes 0 fails.

Public Inquiry – 1 and 8 May 2018

9. Following concerns raised during the processing of the variation application by Valentine Bonnybridge to increase its authorisation, I directed that the three licence holders should be called to a conjoined Public Inquiry. The usual call up letters and Inquiry briefs were sent calling the operators to Edinburgh on 1 May 2018.
10. The Public Inquiry duly convened. Those present were Mr Mark Valentine, director and transport manager, represented by Mr N Kelly, Solicitor, Glasgow; Mr William Wright, sole trader and transport manager, represented by Mr T Docherty, Solicitor, Glasgow; and Mr

Martin Valentine, sole trader who was unrepresented. The Inquiry did not conclude on 1 May and reconvened on 8 May with same parties present. Mr Kelly lodged further productions for Mr Mark Valentine.

11. Each operator had been asked to provide evidence of financial standing and there were separate private sessions within the Inquiry to consider finance.
12. It was confirmed during the Inquiry that these operators are linked by family ties. Mr Wright is the father of Jacqueline Valentine and father in law of Mark Valentine. Mark Valentine and Martin Valentine are brothers. The brothers' licences share an operating centre. Mr Wright's operating centre is not the same premises but very close by.
13. It was acknowledged by Mr Kelly that his client, Mr Mark Valentine, anticipated that if the licence survived, then the likelihood of the variation being granted was marginal.

The issues for the Inquiry

14. In his letter of 23 January 2018, Mr Mark Valentine explained his reason for the application to increase his authorisation

"I think it is important to explain my application to increase the number of authorised discs. I currently have 2. My intention is to use 3 in all likelihood but I have applied for 4 because I feel it gives me a degree of flexibility in regards to use of vehicles etc. I understand that that has an impact on the financial standing requirement.

"My understanding is that the financial standing information presented to you is sufficient to meet the financial standing requirement. If there is an error on that front please advise me immediately.

"I have submitted to you an advertisement as required and also a letter from the site owner regarding the number of parking spaces available.

"I think I have complied with all matters now except the issue of the operation of additional vehicles.

"I was granted my O Licence some years ago and it is due for a 5 yearly(sic) review this year. In that time, I have owned 4 separate vehicles detailed below:

"1. SW62 XHG which I have not used but which is being used by my brother. He had difficulty with finance. He has been using this on his own licence. His name is Martin Valentine of Denvil Haulage. Up Until January 2017 a self employed driver drove for my brother. He passed away in January 2017. Since then he has been using one of my drivers although that driver is still employed by me but I bill him for this.

"2. V21 LEY a tipper which I have owned since 2013 and continue to use this.

"3. I own AY60 BBZ which is a 44 tonne articulated vehicle. I have owned this since May 2015.

"4. I bought PK60 SZU a 44 tonne vehicle in June 2016.

"5. BG62 SWV I bought this in October 2017 as a spare because of AY60 and SZU breaking down regularly. It is now on my licence and has been since December.

"The difficulty I suppose is that at times these vehicles have been used by others on other O Licences and when that happened they should not have been on my margin and I think that that has been done properly.

"One of the users was my father in law who is called William Wright trading as WMW Contracts. I believe he may have used 2 of the 3 vehicles but I am not sure from recollection only.

"V21 LEY has now been moved to Mr Wrights O Licence which means I own 2 vehicles currently. However 2 of these are off the road, one through damage and the other through maintenance. Therefore I hire vehicles and these should be on my margin.

"I wonder if it would be possible since you appear to have some information supporting the contention that there has been other unauthorised use if you could specify exactly what is meant by this and if you could say what vehicles are said to be involved."

Productions (other than for financial standing)

15. Valentine Bonnybridge

1. Remittance Tarmac → VH
2. Invoice Denva → VH
3. Invoice VH to Denva
4. Remittance Tarmac → VH
5. Invoice DH → VH
6. Invoice VH → DH
7. Bundle of sales documents VH → DH 2015 -2018
8. Bundle of sales documents DH → VH
9. **[REDACTED]**.

10. RHA analysis of drivers' hours (in black folder) and driver infringement letter.
11. PMI sheets (in black folder) and service contract with Scania dated 14/9/15.
12. DVLA driver licence checks (in black folder)
13. Driver defect books.

16. Denva

1. Service contract with Scania dated 17/12/12
2. PMI Scania inspection sheets
3. Documentation showing transactions with Valentine Bonnybridge

17. WMW Contracts

1. Planned maintenance inspections
2. Sample drivers' hours system details
3. Driver licence dates
4. Planner
5. Daily defect sheets

Finance

18. [REDACTED].

19. [REDACTED].

20. [REDACTED].

Vehicle history

21. The vehicle specification history for these 3 licences from 2015 to date of Inquiry is as undernoted:

Denval (1 vehicle authorisation)

SW62 XHG (32t.) specified 3/12/15. No other vehicle has been specified.

WMW (2 vehicle authorisation)

W20 WMW	31/8/07 – 11/2/16
W10 WMW (32t.)	10/3/2000 to date
V21 LEY	27/9/16 – 4/1/17 and 8/1/18 – 2/5/18
AY60 BBZ	4/1/17 – 8/1/18

Valentine Bonnybridge

V21 LEY	22/1/14 – 27/9/16
AY60 BBZ	11/4/15 - 13/12/16
PK60 SZU	27/9/16 – 28/12/17
EO13 RRX	2/1/17 – 9/3/17
BG62 SWV	8/12/17 to date
BT16 FFA	28/12/17 – 13/3/18
PK60 SZU	13/3/18 to date

Mr Mark Alexander Valentine's evidence

22. Mr Mark Valentine, now aged 45, left school at 16; was a glass cutter; had periods of unemployment, gained his driving licence aged 21 and drove 7.5t vehicles until 1999 when he gained his LGV licence. He worked for his father-in-law, Mr Wright, for 10 years on tipper work. In 2009, he and his wife gained an operator licence as a partnership and in 2014 an

operator licence in name of the limited company, Valentine Haulage Bonnybridge Ltd. The work was central Scotland, in the main tipper work and with a Tarmac contract. A chance came to buy a lorry. Mr Wright was already a Tarmac contactor and introduced him to Tarmac. The vehicles are driven by self-employed drivers and all the instructions for drivers come by text from Tarmac. Tarmac doesn't specify that his drivers be self-employed; it is how he has arranged it with his driver, Alistair Walters.

23. Vehicle PK60 SZU, a tractor unit, is his. BT16 FAA is a Scania rental vehicle as his vehicle PK60 SZU developed a leak and had to go off road from 28 December 2017. BG62 SWV is a tractor unit and is his. At Christmas time the tippers are dormant so he hired in an additional unit and ran it a week prior to putting it on the licence. AY60 BBZ and V21 LEY are his.
24. EO13 RRX and PK60 SZU and V21 LEY were all being used in the period 2 January 2017 to 9 March 2017. He used the vehicles rather than parking one up. He realised he had jeopardised his licence.
25. He has a business relationship with his younger brother, Martin. Martin has his own operator licence and he, Mark, gives him Tarmac work to do. Tarmac pays Valentine Bonnybridge for the work Martin Valentine does. Tarmac pays Valentine Bonnybridge and Martin (as Denvall Haulage) invoices for the same amount paid by Tarmac. This was demonstrated in the productions. The arrangement was set up as brother Martin could not get a new contract from Tarmac. He had helped Martin, who had some savings, to get into haulage. He wanted to help him in any way and got a tipper and guided him into the Tarmac work. They had expected him to get his own Tarmac contract but the person in Tarmac left and so they did it all through Valentine Bonnybridge. Valentine Bonnybridge is not making any money out of the work his brother does. Valentine Bonnybridge invoices Denvall for fuel and other outlays. He does it for his brother. He'd do anything for his brother. He did not think there was anything wrong in what he was doing.
26. Mr Wright was a great support in getting into Tarmac and in encouraging him. He speaks to him daily and sees him in the passing and at family events and holidays. He was very upset that his actions had led to Mr Wright being at a Public Inquiry.
27. He had applied for an increase in the licence as business was good and he thought about expanding. Every time he got the finances, something happened and he had to stop the application. He instructed Beltrami & Co as they (Valentine Bonnybridge) had an additional vehicle on Mr Wright's licence and wanted to get it onto their own licence. He briefed Beltrami. The letter of 23 January 2018 was prepared by Beltrami and signed by him. He didn't read the letter but flicked through and read only bits of it.
28. He was using the margin on his father-in-law's licence. He didn't think it would become an issue, with it being family. He understood now it was not the way to go. Mr Wright was transport manager at the start. He could not recall when he, Mark, became the transport manager. He thought it was September 2016 when he signed the forms and submitted his certificate to be transport manager. He forgot to take Mr Wright off. Mr Wright would have assumed he was off.
29. He agreed that vehicles were not always presented in the right week for their PMIs but they were being booked into Scania. He has always used a 4 week schedule, from his tipper days. They did use DDRs, including when vehicles were not specified. Defects do get fixed (reference made to the recurring defect on V21 LEY noted by driver Walters in October 2017 over 3 months). He always looked after vehicles even if not specified. He did look at the defects book. Vehicles are checked every weekend.
30. An immediate prohibition was placed on a vehicle and trailer on 19 December 2017. It was not their trailer but one belonging to Asda. The driver had not noticed a bulb had gone and it was seen when he passed a DVSA checkpoint. The driver said he had done his check. It must have happened on the run. The test pass rate is perfect. They have been members of

the RHA for 2-3 years and from December 2017 had moved from in-house checking to using the RHA. He had to discipline a driver for speeding and another for drivers' hours.

31. He is not a greedy person. He like his work. He can't say 'no' to people by which he meant if someone asked him to do an extra load he'd do it. He was not referring to the Tarmac work. He has put a lot of blood, sweat and tears into the business and would hate it to go down. The consequences of loss of the licence would also affect his brother. SW62 XHG is in his Valentine Bonnybridge's name but "belongs" to brother Martin. Martin couldn't afford the lump sum needed by the finance leasing company. After 60 months, the vehicle will belong to Martin. Martin is making all the payments through Valentine Bonnybridge. [REDACTED]. SW62 XHG has not been used on the Valentine Bonnybridge licence. He had employed a driver for his brother as with the shortage of drivers it was easier for Valentine Bonnybridge to employ drivers. Valentine Bonnybridge is CIS registered whereas his brother's Denval Haulage is not. That is why driver Colin Gillespie is paid through Valentine Bonnybridge and is on Valentine's monthly return to HMRC.
32. V21 LEY had been owned since 2013 and used in 2017. It was a write off in a smash in December 2017. PK60 SZU is still on finance. Two trailers are on finance, bought for a contract which was going well, then quiet, so off road more often than not. He was getting work he liked from Asda. His father-in-law didn't do Asda work. PK60 SZU is the vehicle doing the Tarmac work.
33. The consequences of revocation of the licence would be disastrous given the outstanding finance. The sale of the vehicles would not cover the finance. He did not know if the company could survive. He appreciated the chance of any increase in authorisation was very small. He could survive a 3 month suspension though drivers would be paid off and it would be hard making payments. If not revoked, he would keep to the current authorisation. He is sticking to the rules and feels stupid.
34. V21 LEY was specified January 2014 → 27 September 2016. EO13 RRX specified 2/1/17 →9/3/17. Between March 2017 and December 2017 only one vehicle was specified on the licence. From March to December he was using PK60 SZU. It would have been possible to specify V21 LEY but he failed to do so. It was a lapse as he'd been under the impression it was on the licence. A disc on the window had not been sent back from a previous time.
35. He had tried to be honest at the first day of the Inquiry but failed. He had used more vehicles than he should have done. He really enjoys working hard in haulage and has been in haulage 20 years. If given the chance he could turn things around. He had wanted to increase his licence but fell back on the finance threshold and back to square one. He would stick to the rules. If the company was allowed to continue, he would put forward an additional transport manager.

Mr William Wright's evidence

36. Mr William Wright born in 1949; is a married man of 47 years; is an operator and transport manager on his own licence; is transport manager for Martin Valentine trading as Denval Haulage. He confirmed that Mark Valentine is his son-in-law.
37. He started in 1987 with a restricted licence in civil engineering work, with 4 tippers. The work dried up early 1990s. He found quarry work and that led ultimately to Tarmac work, in the Glasgow/Edinburgh/central belt area. He has a 2 vehicle authorisation now, reduced from the 4 he had some time ago. He drives occasionally and has a full time driver who has been with him for 30 years. He only does the quarry work. There is no business or financial connection between his business and that of his son-in-law. He was transport manager for his son-in-law up until he got his own CPC in 2016.

38. Tarmac is his sole source of income, as shown in the bank statements. Tarmac dictate the loads. He had no arrangements with Mark Valentine such as described with Denval Haulage. He is simply transport manager.
39. He has a clean DVSA encounter history over last 5 years. There were two occasions in the past (2009 and 2011) when the driver was not carrying his previous analogue charts. The last annual test fail was in June 2013. He has a contract with Scania, with PMIs on a 4 weekly frequency (evidence produced).
40. He saw the letter, dated 23 January 2018, submitted by Beltrami & Co. when going over the Public Inquiry paperwork with Solicitor, Mr Docherty. He had no input to it. He thought the wording was all wrong. It is accurate but not explained properly. He, Mr Wright, has not used 2 or 3 vehicles. He accepted that V21 LEY was specified on his licence from 27 September 2016 to 4 January 2017. After 4 January 2017 he thought it was on the Valentine Bonnybridge licence. He assumed Mark had put it back on the Valentine licence, as it was not on his (Wright's) licence. He accepted that it was on his (Wright's) licence from 8 January 2018, which was supposed to be temporary until Mark could up his licence. There was a heated conversation as it was not on any licence and so he put it on his licence temporarily until Mark's licence was up (increased). A William Wright disc came for that vehicle. Regrettably, it was on the licence too long. He didn't think they couldn't do it and he was sorry. It was helping family and to help Mark out until he could get his own licence increased. Mark was paying the driver's wages. His involvement with the vehicle was to make sure the tachos were okay and inspections getting done. He saw the vehicle almost every day. Instructions, by text, would go direct from Tarmac to the driver. His own work for Tarmac came from a separate text. He removed V21 LEY from his licence the previous week.
41. He had not discussed the Public Inquiry with his son-in-law. Relations were a bit strained, to be in this position as he had always tried to be by the book. He now understood the difficulty of V21 LEY being on the licence as the user was Valentine Bonnybridge. It would not have been a problem for him to have paid the driver's wages and supervised him. He had not intended to mislead the Traffic Commissioner. He saw how difficult it was for him as transport manager not knowing it was not right. He has learned that it is not legal and it will never happen again. He had put himself in a very difficult position. His son-in-law had not forced or pushed him to do it.
42. He will be 70 in June 2019 and his very long serving driver will be 65 in October 2018 but wants to go a further year. So possibly October 2019 will be his retirement date when he will leave the industry. If the licence was revoked, he would close the business as there would not be the income. He produced a letter from Barrie Scott. He could survive a suspension of a month. He could survive with the one vehicle with himself being the relief driver. He had a good record for 30 years and he was disgusted as this was not the way he wanted to leave the industry. He would not have let anyone, other than family, use his licence and what he did was only temporary. They were not bad people, were not fiddling but have made mistakes and these have been highlighted to his horror.
43. I asked him why there had been a delay between the call up letter of 27 March and V21 LEY only coming off the week before. He said it was only the week before that he realised. I put it that there was value if it was still operating and he had no answer to that.
44. **[REDACTED]**.

45. [REDACTED].

46. [REDACTED].

Mr Martin Valentine's evidence

47. Mr Martin Valentine has been working in farming and farm vehicles and had an interest in lorries given his father was a lorry driver. His brother, Mark, encouraged him to get his Class I licence as he was always needing drivers. He had not worked as an HGV driver for anyone, and never full time for his brother who had his own full time drivers. He got an operator licence as he fancied putting a lorry on the road. He had been helping Mark with maintenance and learning. He'd been self-employed as a farm contractor. The company, Denvall Haulage Ltd, had been formed as they (he and partner Anne Denholm) intended to change the entity as advised by the accountant. The company is dormant. There was no significance in date of 4 January 2018. He and Ms Denholm are directors.
48. He applied for the licence on 2 April 2015 for 1 vehicle and 1 trailer, with Mr Wright as transport manager. He knew Mr Wright through brother Martin. He and Mr Wright share premises at Boghead. He has the one vehicle, Scania SX62 XHG and Scania does the maintenance. He pays the lease through his brother. The lease start-up costs of 30% deposit and 20% VAT were too much for him. He reimburses his brother. He is thinking of selling the vehicle as the Tarmac contract is not as supposed to be. Tarmac are not looking for new hauliers.
49. SW62 XHG is driven by one of Mark's drivers, Kenny Lightbody. Occasionally he, himself, drives. He doesn't drive full time as he wasn't sure of the certainty of the contract. He is a machine operator for Central Demolition, paid as a full time employee with PAYE and NI deducted. He does not employ any drivers. The wages are paid through his brother. He does use one self-employed driver, Ian Galbraith, for any available work. Ian Galbraith drives on Tarmac work and approached him, Martin, for any available work. He works once or twice a week. He pays his wages through his (Martin, Denvall) bank account.
50. He produced documentation to show DDRs for SW62 XHG; invoices with Valentine and scheduled year planner with Scania. The driver takes the vehicle to Scania. He gets the reports from Scania by email and forwards them to Mr Wright who looks at them and tells him what he should or should not be doing. Mr Wright used to do the analysis. He, Martin, did not have a company card for downloading. Mr Wright took to do with the downloads. The analysis is done by the RHA and in name of WMW Contracts.
51. At present, he financially gets nothing out of this in cash. His partner gets paid a small wage for looking at the paperwork. He had wanted the Tarmac contract but it was not encouraging as every time it was refused. The vehicle was signed for through his brother and the Tarmac contract. He did not realise he was so tied in. Asked if he felt that he was the operator, he said he takes a lot to do with the maintenance, yes'.
52. If the licence was revoked the vehicle lease would be lost and the vehicle would not pass to him. The amount outstanding and what the vehicle is worth is approximately [REDACTED]. He would like to move on to a contract, which is not as tying as Tarmac. Possibly, they'd paid too much for the vehicle. He made the deal. He had no experience of buying a lorry. He is not turning any profit as he paid too much for the vehicle.

53. Suspension of the licence would lead to loss as he'd have to pay the lease and the PMIs and the driver would be unemployed. He could go 2 - 3 months.
54. Mr Wright does the tachographs. He sees him 2 or 3 times a week, at the yard of a weekend. His brother and Mr Wright see tipper income declining. The arrangement was not Mark creaming money off this and giving him, Martin, the occasional payment. If he, Martin, was to be driving, he would be drawing a wage.

Closing submissions

55. For Valentine Bonnybridge (Mark Valentine), Mr Kelly submitted Mark Valentine had been in lorries all his life; the company held an operator licence. There were 3 operations. Mr Wright had operated over 30 years; Mr Martin Valentine over several years; Mark Valentine over 10 years. Mr Wright was transport manager and after Mark was appointed there were two transport managers. Mr Wright should have been removed, but was not. The licence has had professional competence at all times. All convictions had been addressed.
56. The letter sent by Beltrami & Co was a baring of the soul. He had applied for an increase to regularise matters. The company did not have sufficient financial standing for an increase. On any reading the letter from Beltrami & Co would have raised concerns and hence the call to Public Inquiry.
57. Martin Valentine had one vehicle specified. He is not a fig leaf and was able to answer questions. There had been intromissions between the two entities since 2015. This was a familial but also arms' length arrangement for which there was this documentary evidence. The arrangements for the vehicle and finance, [REDACTED], are credible. This was not fronting. The issues are those of *Interlink v. Night Trunkers* – who is operating and using. Tarmac give instructions direct to the drivers. Tarmac set rates so there is no question of undercutting. Tarmac holds all the cards. There was consistency in the evidence from Messrs Valentine. There had been faith in Tarmac which did not bear fruit in a contract for Martin. Mark Valentine was not making any money. The accounts between Mr Wright and Mark Valentine appear consistent. This was a case of mis-placed sense of loyalty. Mark Valentine told the truth at this Inquiry. It was not greed but wanting to get on with things. He was not cocking a snook.
58. There was a balancing exercise to be done. On the positive only two prohibitions in 2½ years; no fails at test over 5years. However, it is amazing that parties who appear at Public Inquiry do not appreciate the enormity of revocation when it stares them in the face. In relation to trust, Mr Kelly submitted that by a gossamer thread, I could trust Mr Mark Valentine. There is a system for drivers' hours monitoring and downloading; DDRs; the V21 LEY DDRs issue of 2017 has ceased – there are positives. This is the first time at Public Inquiry. He referred to the *Bryan Haulage (No.2) T2002/217 and Priority Freight T2009/225* case law and the questions posed. If the licence was to continue, there would be compliance. I was asked to consider the family dynamic. Direct regulatory action against the licence was expected. There is no margin on the licence. Severe consequences will follow – suspension or curtailment. It is anticipated that the Traffic Commissioner will view this as a serious case. He does not anticipate a slap on the wrist. As transport manager he is still of good repute and it would be disproportionate to find that he has lost his repute.
59. For William Wright. Mr Docherty sought to develop and support Mr Kelly's submission. Mr Wright is towards the end of his career in haulage. He knows how serious the case is. He has had no prohibitions for years; his test fail history is below average; I should take a proportionate view. This is a family case, an almost classic territory for exceeding authorisation. Mr Wright specified a vehicle of which he was not the user. It was a cruel irony that some sort of contractual relationship could have been entered into. Considerations, which were not seen by Mr Wright, have dawned on him. He had learned a great deal from the Public Inquiry. His knowledge was not what it should have been. He has trouble with

conceptual issues – who the ‘user’? There is an element of artificiality in this case. Tarmac send texts to drivers so he and his driver can be sent to different quarries. There is a danger of confusion over operator licences.

60. Mr Wright categorised the Beltrami/Valentine letter as Mark Valentine baring his soul. There should be trust in Mr Wright, taking the past into account. He has a short time left in the industry. There has been full disclosure. In terms of the *Bryan Haulage* question, he should not be put out of business.
61. For himself, Martin Valentine submitted that his finances were not undercutting anyone as Tarmac decides what the vehicle earns. He intends to offload the vehicle and start again. He felt they were let down when they were turned down for a Tarmac contract.

Consideration of the evidence

62. Findings in Fact

1. Mr William Wright has held a sole trader operator licence since 1992, with current authorisation for 2 vehicles and 1 trailer. He has not come to the attention of either DVSA (VOSA) or the Office of the Traffic Commissioner in any material way until my Office had to query the operation of vehicles by Valentine Haulage Bonnybridge Ltd and Mr Mark Valentine.
2. The pattern of vehicle specification in Mr Wright’s licence is such that vehicles with personalised plates were specified (as seen at page 3 of the brief and at paragraph 21 above). Latterly, he has operated one sole vehicle W10 WMW on Tarmac work, the principal driver being a direct long-standing employee now nearing thoughts of retirement.
3. Matters changed when Mr Wright allowed the margin which had sat on his licence since November 2011 to be used by another operator, Valentine Bonnybridge, the director of which was his son-in-law, Mr Mark Valentine, and on which he, Mr Wright, was nominated as transport manager.
4. These vehicles were specified on Mr Wright’s licence when he was at no time the user of those vehicles:
V21 LEY
A60 BBZ
5. The last vehicle to be specified on Mr Wright’s licence, other than his own long-standing vehicle W10 WMW, was not de-specified until 2 May 2018, that is after the date of the call up letter dated 27 March 2018 to this Inquiry.
6. Other than Mr Wright’s own vehicle W10 WMW, the vehicles specified on Mr Wright’s licence from 27 September 2016 were used by Valentine Bonnybridge.
7. Valentine Bonnybridge has an authorisation of 2 vehicles and 2 trailers and was granted such in January 2014. It is a successor licence to a partnership licence of one vehicle held by Mark Valentine and Jacqueline Wright (now Valentine). Attempts by Valentine Bonnybridge to successfully apply for an increased authorisation failed for Valentine Bonnybridge could not show the level of financial standing required for any authorisation above 2 vehicles.
8. Mr Mark Valentine, as the moving force in Valentine Bonnybridge, had more work and more business available to him than the licence authorisation permitted. He had his settled work with Tarmac on which he had 2 vehicles working and he also had work

from Asda which he wanted to develop and not turn down. He saw the business developing into the Asda type of work.

9. Mr Mark Valentine for Valentine Bonnybridge was not meticulous in the specifying and de-specifying of vehicles. I cannot be certain which vehicles were being operated by the company but the company operated in excess of the authorisation from September 2016 through use of the William Wright licence and Valentine Bonnybridge discs.
10. Mr Mark Valentine gained his CPC and was nominated to the Valentine Bonnybridge licence in September 2016. It was an oversight that Mr William Wright was not removed from that licence then. Mr Wright did not perform the duties of transport manager after that date.
11. Mr Martin Valentine, with a trading name of Denva Haulage, applied for and was granted an operator licence for 1 vehicle and 1 trailer in June 2015. He used his savings to meet the initial financial standing. He has not derived any material income from Denva Haulage since that date but intromissions flow to and from his bank account to reflect that Valentine Bonnybridge has a contract with Tarmac on which Valentine Bonnybridge used the vehicle specified on Denva Haulage's licence. The driver of the vehicle used on this Valentine Bonnybridge contract with Tarmac is paid by Valentine Bonnybridge. Financial records going back to 2015 reflect this arrangement. Mr Martin Valentine is making payments to Valentine Bonnybridge for a vehicle which is not earning its keep.
12. Mr Martin Valentine is a full time employee of a completely separate business with no connection to the matters or transactions of interest to this Inquiry.
13. Mr Martin Valentine did not have a company card for downloading the vehicle unit. He left all tachograph matters to the transport manager, Mr Wright. He took an interest in the vehicle and its Scania safety inspections. The vehicle has been kept in a roadworthy state.
14. Mr Martin Valentine could show financial standing for the one vehicle authorisation.
15. I find that the user of vehicle SW62 XHG was Valentine Bonnybridge and not Martin Valentine.
16. Mr William Wright could not show financial standing for his authorisation of 2 vehicles, nor for one vehicle. However, he had submitted accounts to HMRC as if he and his wife were trading WNW Contracts as a partnership. The partnership accounts clearly set out such with entries consistent with the operation of the haulage business.
17. Valentine Bonnybridge could show financial standing for the current authorisation of 2 vehicles and for the variation application for 4 vehicles.

Considerations

63. This is a tangled family weave at the heart of which is the ambition of Mr Mark Valentine to have a larger haulage operation than the law allows. Mr William Wright has had a long time in goods vehicle operating, at modest scale, for himself (or partnership) and now comes to my attention on three issues: that he has loaned the margin on his licence to another operator; that the entity in which he declares to HMRC is a partnership; that he is a transport manager for his own and Martin Valentine's licence.
64. It is beyond doubt that being thwarted by a fundamental lack of the financial standing needed for an authorisation of more than 2 vehicles, Mr Mark Valentine arranged to use the margin on

Mr Wright's licence. Mr Mark Valentine was seeking to increase the authorisation on Valentine Bonnybridge to 4 vehicles. These vehicles were available to Valentine Bonnybridge at this time - V21 LEY, AY60 BBZ, PK60 SZU, EO13 RRZ, BG62 SWV and BT16 FAA. Some of these he hired in. He used out of date Valentine Bonnybridge discs to cover some use. Mr Mark Valentine crossed the line from being a compliant operator into one who grasped additional business as it came along and who was expanding from tipper work into the operation of 44t arctics and trailers.

65. The arrangements with Martin Valentine/Denval Haulage derive from the fraternal relationship of the brothers and appears now to be a misguided venture which does not sit easily with operator licensing. I am not prepared to find that the pattern of contra invoicing dating back to 2015 has been manufactured to meet this call to Public Inquiry. There does appear to be an arrangement whereby Valentine Bonnybridge which had a Tarmac contract used Martin Valentine as Denval could not secure such a contract. The brothers blame Tarmac's lack of faith for the arrangements they put in place. Believing that Martin would get a Tarmac contract, the vehicle SW62 XHG was purchased. The contract was not forthcoming. The vehicle was deployed to be used by Valentine Bonnybridge on Tarmac work. Valentine Bonnybridge paid the driver and the work the driver did was under the contract between Valentine Bonnybridge and Tarmac. But for that contract, the arrangement whereby Tarmac texted the particular driver would not have existed.
66. Martin Valentine was not detached from the use of SW62 XHG. He took an involvement with ensuring it was subject to the Scania PMIs and he expected transport manager, Mr Wright, to deal with the tachographs. DVSA performance reports reveal no adverse encounters or failures. He expected, over time, to become the owner of SW62 XHG, which he chose. That there was not a company card for the vehicle unit was an omission which should have been caught by the transport manager on day one of operating and not as latter day catch up.
67. It will be clear from the foregoing considerations that I have acknowledged the positive elements to this case – namely the relative absence of any adverse DVSA performance failings. There was some candour in the productions lodged for the Public Inquiry and in the muddled letter submitted through Beltrami. There is the context of familial loyalties and assistance as distinct from sale of a margin on the cowboy market. Mr Wright, in particular, has had a long working life in haulage without being called to a Public Inquiry or giving concerns to the enforcement authorities. However, the fact all of this happened between family cannot begin to excuse what was going on. Mr Mark Valentine chose to exploit that his father-in-law had a licence with a margin. Unlawful operating through “keeping it in the family” is not permitted. It is an arrangement which strikes at fair competition and trust.
68. I have to take action against all 3 licences and against the transport managers, Messrs Mark Valentine and William Wright. I have guidance available to me in the case law quoted by the Solicitors; the Court of Session case of *Thomas Muir (1999 SLT666)*; the seam of case law relative to trust between operator and the Traffic Commissioner; and I have help from the Senior Traffic Commissioner's Statutory Guidance Documents and, in this case, particularly, Documents 1 (Repute) and 10 (Proportionality).
69. In respect of the Valentine Bonnybridge licence personified by Mr Mark Valentine, I have considered revocation but am prepared to hold back from revocation given the *Bryan Haulage* case. This is the first time at Public Inquiry. These proceedings have been a source of great worry for him not least because of what he has done to his family. However, I cannot be further merciful. For his own financial gain and purposes, he operated in excess of authorisation and used another's operator licence, that of Mr Wright. Repute is indivisible so if I find against his repute he loses repute as transport manager and the company as operator loses repute through the loss of director repute. I will suspend the Valentine Bonnybridge licence for 3 months applying the considerations in the *Dundee Plant Hire (T2013/47)* case. As was said in Dundee Plant, the business may or may not survive. I have to recalibrate fair competition. I infer from the queries made by Leeds that it was known in the haulage community that there was operation in excess of authorisation by Mark Valentine. The folly of

such has come home. During the period of suspension the vehicles specified on the licences, as at the date of this decision PK60 SZU and BG62 SWV, cannot be used on this or any other licence and must be parked up and unused at the operating centre. The variation application is refused. No increase in authorisation will be permitted on this licence for at least 12 months following the expiry of the suspension. Nothing less than this 3 month suspension and prevention of expansion for 12 months thereafter can serve to mark what has happened. Mr Mark Valentine is given the severest warning possible short of disqualification as to his repute and as to his repute as a transport manager. He must not be nominated as a transport manager to any other operator for the foreseeable.

70. In respect of William Wright, there are issues with financial standing and entity which will have to be resolved before the end of the period of suspension which I am about to impose. Mr Wright is a transport manager as well as operator. He should not have allowed his licence to be put at the disposal of any other person. His judgment was affected by the very close family tie of Mark Valentine being his son-in-law and the former licence being that of Mark and Jacqueline being a partnership. I do believe that he would not have given his margin to a stranger or for payment. So whilst that might seem to distinguish him from some of the others with whom I have had to deal and whose actions have struck at the very heart of operator licensing, family ties do not excuse. What did not impress me about Mr Wright was that notwithstanding the despatch of the call up letter on 27 March 2018, Valentine Bonnybridge's vehicle V21 LEY remained on the Wright licence until 2 May 2018.
71. I do not believe that Mr Wright will repeat the folly of allowing another access to his licence. I believe he can be trusted in future. However, I have to take regulatory action against his licence for not to do so would send a very odd message to compliant operators. This licence will be suspended for 3 months during which time the specified vehicle W10 WMW cannot be used on this or any other licence. Thereafter the licence will be permanently curtailed to one vehicle only. Satisfactory evidence of financial standing for that one vehicle must be demonstrated to my Office by 31st January 2019 failing which the licence will be revoked without further proceedings. The operator must also demonstrate that HMRC has been advised that the business is a sole trader operation and that the tax return for 2017/18 has been adjusted to reflect that Mr Wright is a sole trader. If Mr Wright is not prepared to instruct his accountant accordingly then he must surrender this licence and apply for a licence in name of the partnership. If such evidence is not produced to my Office by 31st January 2019, the licence will be revoked without further proceedings on the grounds that there has been material change since grant of the licence. Mr Wright is given the severest warning short of disqualification in respect of his repute as a transport manager. I cannot let him be a transport manager for any other licence, including that of Martin Valentine.
72. In respect of Martin Valentine, who was unrepresented, I find that he has been led into having an operator licence without proper expertise and guidance. I felt sorry for him for he has assumed the financial burden of vehicle SW62 XHG and no contract of his own on which to use it. He has been ill advised and let down by Messrs Wright and Mark Valentine. The licence has been 'used' in the technical legal sense by Valentine Bonnybridge. The series of contra intromissions directly resulted from him not getting a Tarmac contract but cannot hide that the user has been Valentine Bonnybridge. I have to suspend the licence given the purposes to which it was put. I am also concerned that it might be used by Mark Valentine to circumvent my suspension order against Valentine Bonnybridge, as the temptation would be there. I have removed professional competence from this licence by my decision that Mr Wright cannot be a transport manager for anyone else given his blemished repute. This licence will need a new transport manager. Mr Martin Valentine needs quality advice from other than a family member if he is to have any hope of a career in haulage. He may wish to think again. The period of suspension will be 3 months to reflect that this licence has not been operated on a proper footing. The vehicle SW62 XHG will be suspended for that period and cannot be used on this or any other licence. I warn Mr Martin Valentine as to his repute. I grant the licence a period of grace of 3 months to find a new transport manager.

73. My orders will come into effect on 23:59 on 30 October 2018. I direct that no other vehicles can be specified on these licences between now and 30 October 2018. My orders must not be circumvented.

Summary of my orders

74. Valentine Haulage Bonnybridge Ltd – the operator licence will be suspended for 3 months with effect from 23:59 on 30 October 2018 – section 26 applies. During the period of suspension vehicles BG62 SWV and PK60 SZU will not be used on this or any other licence – section 26(6) applies. The operator company, director and transport manager, Mr Mark Valentine, are severely warned in respect of repute. Mr Mark Valentine cannot be nominated on any other licence. The variation application is refused. There can be no increase in the licence for at least 12 months following the expiry of the suspension.
75. William Wright t/a WM Wright Contracts – the operator licence will be suspended for 3 months with effect from 23:59 on 30 October 2018 – section 26 applies. During the suspension vehicle W10 WMW will not be used on this or any other licence – section 26(6) applies. Thereafter the licence will be reduced to one vehicle and one trailer only. Mr William Wright is severely warned as to his repute as operator and transport manager. He will not be permitted to be a transport manager on any other licence and is removed from licence Martin Valentine t/a Denva Haulage. Satisfactory evidence of financial standing and of entity will be required by 31 January 2019 failing such the licence will be revoked in terms of sections 26 and 27.
76. Martin Valentine ty/a Denva Haulage – the operator licence will be suspended for 3 months with effect from 23:59 on 30 October 2018 – section 26 applies. During the suspension vehicle SW62 XHG will not be used on this or any other licence – section 26(6) applies. I grant a period of grace for 3 months to allow a new transport manager to be appointed. Mr Martin Valentine is severely warned as to his repute.
77. My orders will come into effect on 23:59 on 30 October 2018. I direct that no other vehicles can be specified on these licences between now and 30 October 2018. My orders must not be circumvented.

Joan N Aitken
Traffic Commissioner for Scotland
Edinburgh

18 September 2018