



WESTERN TRAFFIC AREA

Decision of the Traffic Commissioner

Public Inquiry in Bristol, 4 March 2019

C M COACHES LTD PH1132411

TRANSPORT MANAGERS:

**COLIN HOLT
ANDREW POOLE
MICHAEL HAZELL**

PROPOSED TRANSPORT MANAGER:

ALASTAIR GRAY

DECISION

**PUBLIC PASSENGER VEHICLES ACT 1981 (the
"1981 Act")**

Pursuant to findings under Section 17(3)(e) of the Act, material change, in that virtually nothing remains the same, and Section 17(1)(a), good repute, the licence is revoked with effect from 23:59, 27 April 2019.

Pursuant to findings under Schedule 3 of the Act and Article 2 of EU Regulation 1071/2009, Michael Hazell has lost his good repute as transport manager and is disqualified from acting as such in any member state for a period of three years.

On a finding of loss of professional competence, I propose to revoke licence PH1140601, Michael James Hazell.

BACKGROUND

1. C M Coaches is the holder of a standard international PSV operator's licence authorising the use of twelve vehicles from an operating centre at 39 Marsh Green Road North, Marsh Barton, Exeter with further authority to park two vehicles at Balsdons Vehicle Services in Okehampton. The licence was granted at public inquiry in February 2015. The transport manager position is recorded on the licence as follows:

Colin Holt	Grant until 9 June 2017
Andrew Poole	9 June 2017 until 21 March 2018
Michael Hazell	25 April 2018 until 10 December 2018
Alastair Gray	Nominated 29 December 2018

2. It is apparent from the documents held on file that the changeover between Mr Holt and Mr Poole actually happened in early December 2016. It is unclear why this was not actioned within the Central Licensing Office at the time.
3. Michael Hazell held a sole trader licence PH1060745. Carmel Coaches Ltd held licence PH1098535, its directors were Michael Hazell, his father Anthony Hazell and his sister Carolyn Alderton. Both licences were revoked at public inquiry in a written decision dated June 2014. Both Michael Hazell and Anthony Hazell lost their good repute and were disqualified for a period of 18 months from any management role in a transport operation and as a transport manager specifically. The issues were the lending of licence discs from Michael Hazell to Carmel Coaches, Michael Hazell failing to perform his role as transport manager (he claimed he had forgotten that he was a transport manager) and numerous and serious maintenance shortcomings. All matters bar the revocation of the sole trader licence were appealed and the appeal was dismissed. Revocation took effect in November 2014.
4. The application for CM Coaches Ltd was made in August 2014. Similarities with Carmel were noted and the application was called to public inquiry. Amongst other evidence to be considered at that hearing, I note the following from the call-in letter at page 108 of my brief:
 - *This application has links with Carmel Coaches Ltd PH1098535 and appears to be a replacement for that revoked licence. The vehicles and equipment will be leased from Carmel Coaches Ltd. The operating centre in Exeter EX2 8PU will be rented from Carmel Coaches ltd and the operating centre in Northlew EX20 3BN will be rented from Mr Anthony Hazell. The safety inspections and maintenance will be carried out at the same workshop which was previously used by Carmel Coaches Ltd*
 - *The traffic commissioner remains to be satisfied that the new systems implemented by the applicant are indeed robust and fit for purpose to ensure that the serious concerns related to safety and compliance of Carmel Coaches ltd do not exist within this new entity's operation*

- *From the letter dated 14 August 2014 the traffic commissioner notes that Carolyn Alderton (daughter of Anthony Hazell) is the majority shareholder of C M Coaches Ltd*
 - *At the public inquiry the traffic commissioner will wish to explore the background to and purpose of the application. From the above cited foregoing issues, the traffic commissioner will seek assurances and evidence that this application is not and will not be a front for Anthony Hazell and/or Michael Hazell*
5. The application was subsequently granted for 15 vehicles (29 had been sought) with undertakings prohibiting the involvement of Anthony and Michael Hazell. The directors were Colin Holt and Christopher Hilditch. They gave undertakings that they would notify the Traffic Commissioner within 14 days of leaving. Mr Holt was also the nominated transport manager. The company attended public inquiry in August 2016 at which the prohibition on the involvement of Michael Hazell was removed. The prohibition on Anthony Hazell was removed at a public inquiry in relation to applications from Michael Hazell, sole trader, and Carmel Coaches Ltd on 1 December 2016.
6. The operator came to the attention of the DVSA following reports of an undeclared fire on a bus carrying children. This led to a maintenance investigation, which was conducted by Vehicle Examiner (VE) Ian Hassett on 13 June 2018. The investigation was returned as unsatisfactory and the following shortcomings were reported:
- Frequency between PMIs showed 14 weeks gaps for 2 vehicles, 12 weeks for 2 vehicles and 9 weeks for another. Not all roadworthiness declarations were signed and brake test figures not always recorded.
 - Advisory defects on fleet check included out of date first aid equipment and fire extinguishers. There was also a defective tachograph and a vehicle displaying a suspension warning lamp. These defects had not been reported at PMI or driver checks. Thirty-one PMI records checked, out of 7 vehicle records sampled, revealed defects that should have been spotted at first use checks had been unreported or undetected by drivers.
 - Test history unsatisfactory. Of thirty-six tests, sixteen failed, including five brake failures.
 - The decelerometer calibration had expired on 7/05/2018.
 - A coach carrying children burst into flames on or around 6 February 2018 causing evacuation of the children onto a busy carriageway but not notified to DVSA. Video of incident placed was on social media by children on the coach on that day.

- No management staff on site on day of visit so unable to confirm transport manager's continuing professional development.
 - Maintenance provider not in house as declared on licence but are using Carmel Coaches workshop over 30 miles away. Only facilities at the operating centre in Exeter were an office with a yard at the rear, no under vehicle inspection facilities.
7. The operator responded to the shortcomings in a document dated 25 October 2018, which mentioned former transport manager Andrew Poole, former director and transport manager Colin Holt and former director Christopher Hilditch. Michael Hazell was keen to distance himself from anything that had occurred whilst he was neither director nor transport manager.
 8. The operator made applications on 5 December 2018 to cancel the registered bus services on the licence in favour of Carmel Coaches Ltd.
 9. It came to my attention that, on 10 December 2018, the director and transport manager were removed from the licence. The standard, automated, loss of transport manager propose to revoke letter was sent requesting a response by 1 January 2019. A response was received by email from Carolyn@cmcoaches, signed Carolyn Hazell, on 19 December saying that a new transport manager was to be appointed by the purchasers and that the purchasers needed to know whether there was any additional regulatory action pending in relation to the licence. Carolyn Alderton had resigned as a director of CM Coaches Ltd in January 2018 so I declined to provide a response.
 10. Mr Alastair Gray was a director of Hookways Ltd from 2006 until the company entered insolvent liquidation in August 2011. He was a director of Hamilton Grays (Devon) Limited from August to November 2011. That company later held licence PH1130469 which I revoked at public inquiry in July 2018. Alastair Gray was the transport manager and Sarah Hamilton the stated sole director and person of significant control. The revocation was due to a prolonged failure to meet the requirements of financial standing. The revocation took effect on 31 October 2018 and the company entered administration the following week. The statement of affairs on Companies House shows an estimated deficiency of £660,000 of which £460,000 is owing to the Crown.
 11. Alastair Gray is a director of HG Holdings (Exeter) Limited which made application PH2007899 on 19 October 2017. The stated purpose of the application was the purchase of the assets of Hamilton Grays (Devon) Limited which was noted as being in financial trouble. Mr Gray withdrew the application on 1 November 2017.
 12. A number of changes and applications were made in relation to this licence on 29 December 2018 using the login credentials of Colin Holt. The applications proposed that Alastair Gray become transport manager and director. The electronic TM1 form was verified by Michael Hazell as director

despite him having resigned as such on both Companies House and VOL with effect from 10 December 2018. All the existing vehicles were removed from the licence and six new vehicles were added, several being vehicles I had previously noted seeing in Hamilton Gray livery. An application was made to change operating centre to the former Hamilton Gray (Exeter) Limited site.

13. I received a letter dated 10 January 2019 from John Burch, regional manager of the CPT, which explained the circumstances behind Mr Hazell's removal as director and transport manager and Mr Gray's subsequent application to be the transport manager on the licence. All parties had been acting on Mr Burch's advice.
14. For all these reasons, I decided to call the operators to public inquiry in the following terms:

Under Section 17(1)(a) that the holder of the licence may no longer satisfy the requirements of Section 14ZA(2), namely that the licence holder no longer meets the requirement of:

- Section 14ZA(2)(a) to have an effective and stable establishment in Great Britain (as determined in accordance with Article 5 of the 2009 Regulation),
- Section 14ZA(2)(b) to be of good repute (as determined in accordance with paragraphs 1 to 5 of Schedule 3 of the Act),
- Section 14ZA(2)(c) to be of the appropriate financial standing (as determined in accordance with Article 7 of the 2009 Regulation),
- Section 14ZA(2)(d) to be professionally competent (as determined in accordance with paragraphs 3 to 7 of Schedule 3 of the Act).

Under Section 17(1)(b) of the Act and Section 14ZA(3) of the Act, that the nominated transport manager may not be exercising continuous and effective management of the transport operations;

Under Section 17(3)(aa) of the 1981 Act, of the 1981 Act, that any undertaking recorded in the licence has not been fulfilled, specifically:

- that vehicles would be kept fit and serviceable, and
- that there would be effective driver defect reporting

15. Mr Colin Holt, Mr Andrew Poole and Mr Michael Hazell were called separately to consider their good repute and professional competence as transport managers.

THE PUBLIC INQUIRY

16. Mr Alastair Gray attended represented by Andrew Banks, solicitor. Michael Hazell attended represented by Jeremy Woodcraft, solicitor. Colin Holt and Andrew Poole attended with Christopher Hilditch in support. Mr Banks rightly pointed out that Mr Hilditch was himself a former director and caution was needed to ensure he did not give his own evidence, not having been called as a witness. I concurred with that view and put Mr Hilditch on relevant notice. DVSA was present in the form of Vehicle Examiner Ian Hassett and Vehicle Enforcement Manager Ross Trott.
17. The oral evidence is electronically recorded and a transcript is available on request; I repeat here only that which is central to my decision.
18. Financial standing was satisfied at the date of the inquiry but I had concerns that submissions from Michael Hazell that money would be removed from the business on completion of the sale to Alastair Gray. Mr Banks offered an undertaking to submit fresh finances in the future.

The evidence of Vehicle Examiner Ian Hassett

19. Mr Hassett adopted his public inquiry statement. He told me that there had been no further enforcement encounters but vehicles had been seen in service with the incorrect address still on the legal lettering.
20. Mr Hassett accepted that he had not been aware of the removal of the prohibition on the involvement of Anthony Hazell with the licence. He told me that maintenance was conducted at Northlew which was owned by Carmel Coaches and staff there referred to "branches of the company", that being Northlew (Carmel Coaches Ltd), Exeter (CM Coaches Ltd) and Bristol (s/t Carolyn Alderton).
21. In response to Mr Hazell's explanation that inspections were conducted in part at Exeter and then completed at Northlew by a different member of staff, Mr Hassett found that to be a flawed approach. An explanation that an MOT had taken place in lieu of a preventative maintenance inspection was also not acceptable. The operator's explanation that new track rod ends had been fitted despite not having been identified as a defect was because MOT testers liked to see new components on a vehicle was also difficult to believe. In relation to the lack of brake test results on PMIs, the operator's position was that this was due to a problem with the printer. Mr Hassett noted that the figures could still be recorded by hand and the sheets correctly completed.

The evidence of Vehicle Enforcement Manager Ross Trott

22. Mr Trott had reviewed a number of maintenance documents provided. He noted the following concerns:

FJ56KOH

Most recent decelerometer test was 12 August 2018 on which the mechanic had noted that the calibration had expired. On 25 September, a brake defect is noted but no confirmatory brake test undertaken.

YN08ZNP

The last preventative maintenance inspection had been on 21 November 2018. There was a roller brake test only on 21 February 2019. The previous recorded brake test was 30 May 2018.

FA07XEH

On 7 September 2018, mechanic notes that the bus is taken before wheels could be re-torqued. They are re-torqued three days later.

The evidence of Michael Hazell

23. Mr Michael Hazell confirmed that his “ban” had been lifted in May 2016 and he had then started working in the business on administrative and driving duties only. He had not become a director until July 2017, Mr Hilditch and Mr Holt had resigned six months earlier. He had taken over the role of transport manager with effect from 15 March 2018, this was noted as 24 April 2018 on VOL.
24. Now that Mr Hazell was back in the industry, he had decided that it wasn't what he wanted to do. He had relinquished contracts as they came up for renewal and was winding down the business. He was training as a commercial airline pilot. He knew Alastair Gray and knew that he was looking to get back in to the industry. The benefit of buying a going concern was that contracts were in place. Audits to achieve contracts could take 2 – 3 months and that was the case with Babcocks. There was a small financial benefit to him.
25. The vehicle fire had been reported to DVSA. It had not been filed to his licence. He didn't use a specific form, just sent it in the post to Leeds. He had closed down the workshop at Exeter and removed that operating centre from the licence. He didn't need to add the new operating centre as it was already on there. The registered office had changed to Unit 65 March Green Road. He had not been aware that he also needed to update the correspondence address.
26. The premises at Northlew were privately owned by his father, Tony Hazell. He had access to them whenever he wanted them. The vehicles are owned by Carmel Coaches which is why some documentation is there. There had been issues with printing with the decelerometer but there was evidence of several roller brake tests each year for every vehicle. Two PMI sheets were in use. Clive would do a topside check, sometimes at Exeter, sometimes at

Northlew and complete the white form. Then an under-vehicle inspection would be done at Northlew which had good facilities and the blue form completed. I was referred to pages 10 and 11 of Mr Hazell's bundle as examples. I noted that the inspection conducted 7 March 2018 shown at page 10 on FA07XEH identified a major safety-critical defect of a handbrake chamber wound off; no explanation was offered.

27. I was taken through evidence of MOTs being undertaken where there were gaps in PMIs and this was confirmed in relation to R902GJO, MoT 15 February and YN08ZNP, MOT 25 January 2018. With the benefit of hindsight, Mr Hazell would have kept the pre-MOT PMI sheet.
28. Mr Hazell undertook a transport manager refresher course in late 2015. The wall planner went forwards at least 6 months. All vehicles had a defect book. Drivers did walk-round checks and recorded nil defects. Clive, the mechanic, was at Exeter and could repair defects.
29. Mr Hazell stressed that I should only consider in relation to him the period of his involvement. The vehicle registration beginning SIG had never been in his possession.
30. When Colin Holt resigned, he asked him for all his username and login details. Mr Hazell hadn't noticed that Mr Holt's name was displayed on the screen. The username was CM Coaches so he thought it was OK to login.
31. I asked Mr Hazell why he would have written to Leeds to notify the bus fire when the requirement was to notify DVSA. He told me that Leeds do the processing of all documents. He knew he couldn't keep the fire under the radar given the social media coverage.
32. I asked about the new track rod ends being replaced when not reported as defective on any PMI. Mr Hazell told me that, with an MOT coming up, he wanted to show work having been done. Mr Hazell accepted that his decelerometer was very temperamental and was near end of life. He now also had an old-fashioned Tapley meter. The vehicles were now all back with Carmel. Mr Hazell told me that he had never had a prohibition since he was transport manager, although he also had never been checked.
33. I asked about the relationship with Mr Gray. Mr Hazell told me that he had known him for years. At times, they had been quite friendly, at others they just got on with their own businesses. He was to be paid £20,000 for the company. The sale was for the business, goodwill and any existing work that Mr Gray wanted to keep. No physical assets had changed hands. Routes had gone to Carmel. There were First Rail Support and Babcock contracts in place. Mr Gray could go straight in to working for them. I asked whether the contracts had a requirement to notify change in control – Mr Hazell said "possibly". There were no issues with Devon County Council.

The evidence of Colin Holt

34. Mr Holt confirmed he had been director and transport manager from the licence began until 18 November 2016 and passed me his resignation letter. He had day to day control of the business whilst in post. It had come to a head when he and Mr Hilditch wanted the business to change direction and take on the X46/47 service to complement an existing route. They had sourced vehicles and ticket machines but this had not been supported by the major shareholder, Carolyn Alderton. They had also been concerned by Michael Hazell who had started running a vehicle from nearby. Following the public inquiry in summer 2016, they were concerned at the influence of Mr Hazell.
35. Mr Holt had provided login details to Carolyn Alderton when on holiday. He was totally unaware that the credentials were still being used. The maintenance facilities in Exeter were still in use whilst he was there. Mr Holt confirmed that formal hire agreements had been in place for the vehicles from Carmel and that the workshop facilities were available.

The evidence of Andrew Poole

36. Mr Poole confirmed that he had submitted his TM1 at the end of 2016 and had been in post from then until 8 March 2018. He now worked for South West Water. They had stopped using the maintenance facilities in February or March 2017. He had been told that a maintenance agreement was not needed.
37. The white PMI sheets were in use during his tenure. He had never seen the blue sheets. He had been concerned at the splitting of the inspections but Michael Hazell had said it was fine.

The evidence of Alastair Gray

38. Mr Gray adopted his witness statement. He told me that the value of buying an existing business was the existing contracts. He thought there would be no reason why they couldn't be carried on. He had spoken to Paul Edwards at Devon County Council and it had been confirmed that the contracts would continue. He had paid a small amount to Mr Hazell at what was termed the point of "exchange" on 28 December, likening the process to exchange of contracts in a house purchase. Everything was now on hold. They had not operated at all until 2 – 3 weeks before the hearing date. The vehicles put on the licence in December had been disposed of and there were now two vehicles which had come from another operator. Maintenance would be undertaken by Budlake Commercials, of which he is also director and is based at the operating centre.
39. Mr Gray hadn't yet spoken to Babcock. He was unable to tell me anything about the liquidation of Hamilton Gray (Exeter) Limited; that was all dealt with by the statutory director Sarah Hamilton. The vehicles had come from Hamilton Gray by novating finance agreements. They had now been disposed of. Sarah Hamilton had nothing to do with the new business.

40. Mr Gray had been “gut-wrenched” following the public inquiry at which I had revoked the licence. He didn’t know whether he wanted to continue which is why a fresh application had not been made. He then thought he would get back in to the industry and wanted to pursue the contracts.

Closing submissions by Mr Woodcraft in relation to Mr Hazell

41. The sale of the business was on the basis that it would expedite matters, there was infrastructure in place and contracts. It was just a way to make a relatively small amount of money rather than simply winding the business up.
42. Many of the matters pre-date July 2017 when Mr Hazell became a director or March 2018 when he became transport manager. On 3 occasions, an MOT fell between missing inspections. With hindsight, the pre-MOT PMI should have been kept on file. The apparent use of FA07XEH whilst declared VOR had been demonstrated to have been down to a particular lengthy journey.
43. Mr Hazell had explained that he had technical issues with the decelerometer. He had given an explanation of the use of two inspection sheets. The process was well-intentioned but he accepted the concerns.
44. On balance, it was accepted that paperwork was not clear and complete but maintenance had not been ignored. There had been a transport manager refresher course. There was induction training and auditing in place and driver licence checks. Mr Hazell’s good repute was tarnished but not lost.

Closing submissions by Mr Banks in relation to Mr Gray

45. The history of Hamilton Gray (Exeter) Limited is a matter of record. On 11 July 2018 (the public inquiry at which I revoked the licence), an opportunity was given subject to certain criteria applying. I had invited a new application. The operator wrote on 26 November indicating a different strategy. It was still subject to scrutiny given the history of the CM licence. There was no issue with good repute.
46. Hamilton Gray (Exeter) Limited had, at worse, an unremarkable compliance history. Mr Gray wasn’t a director. The company had separated director and transport manager duties in line with a steer from a previous Traffic Commissioner. He had taken advice from CPT.
47. The maintenance failings at CM Coaches are in the past. In relation to the Priority Freight question, this was now an operator that could achieve compliance. The new systems were radically different. Should I allow the licence to continue, undertakings would be offered prohibiting any further involvement of Michael Hazell, to provide proof of transfer of the majority

shareholding and to provide further evidence of financial standing. I would be sent a copy of the First Rail and Babcock contracts within a week.

CONSIDERATION AND FINDINGS OF FACTS

The maintenance issues

48. I accept the submission of Mr Banks that the maintenance matters hold no relevance to Alastair Gray nor the company as it would be constituted should the sale be completed. Vehicles have changed, maintenance provider has changed, drivers have changed and the transport manager has changed. Hamilton Gray (Exeter) Limited never gave cause for concern in relation to maintenance.
49. Having made that statement in relation to the company as it would be constituted, I proceed on the basis that the purchase of the business has not yet been completed and it is possible that it will not be. I make my consideration of the company as it was prior to 29 December 2018, as that could well be the way that it stays.
50. Mr Hazell seeks to write-off any history that predates his role as transport manager or director. In relation to him personally, that is understandable, notwithstanding that the - unchallenged – evidence of Mr Poole is that he had influence earlier than that. I cite as an example Mr Poole telling me that he had concerns over the split inspection process which began in February or March 2017 but was given assurance by Mr Hazell that it was in order.
51. Mr Poole told me that he was unaware of the existence of the blue inspection reports (that is, the ones bearing very few defects). This was not challenged by Mr Hazell or his advocate. I note that Mr Hazell was not present when the Vehicle Examiner was given free access to all records. I am concerned, as was Vehicle Examiner Hassett, that the white records were never meant to be provided to DVSA and the blue records provide a much more positive view of the operation. Even in the operator’s own evidence bundle, the white record at page 10 paints a worrying picture. I note the following defects present on FA07XEH on 7 March 2018:

Defect	Action taken
Air gauge not visible	“not required”
Air pressure audible feint	(serviceable)
Reverse horn inop	
Warning and gauges feint	
(steering wheel) shroud loose	
Cont door lower step edge missing	
Row 5 n/s bell push inop	Switch replaced
Instruction of operation of rear window	New label
Row 4 o/s inner seat belt jammed	Replaced
Row 5 n/s window buckle loose	New bolt

Row 7 o/s window belt non-retractable	
Passenger door lower glass broken	
Expansion tank cap broken	
Handbrake chambers wound off	Wound in
Handbrake chamber thread worn	
Various panels damaged	Serviceable

52. By reference to DVSA's Guide to Maintaining Roadworthiness, this inspection sheet identifies three immediately prohibitions and three delayed. The broken door glass and the handbrake chambers wound off, absent any explanation, would also appear to identify significant failures in maintenance systems. There are at least six defects that are driver-reportable. All this on an inspection sheet that the operator has decided to provide to me in evidence. The identification of the handbrake chamber wound off and the worn threads is inconsistent with the explanation that the white sheet is topside only (although the parking brake was presumably obvious from the vehicle not staying where it was put). Eight items are left unrectified but they are not recorded on the blue sheet dated two days later. Neither inspector troubles themselves with recording tyre tread depths. All in all, this paints an appalling picture.
53. It is also of great concern that the operator chose not to keep pre-MOT inspection reports. Was this because of the number of defects reported? There is no sensible reason to discard the document. Mr Hassett's report identifies further examples of gross inconsistency between the two inspections.
54. I have never before come across an operator who undertakes part of a preventative maintenance inspection at one location on one day and then completes it at another location 30 miles away on another day. DVSA's Guide to Maintaining Roadworthiness speaks of a single inspection report for a single inspection. The system set out by Mr Hazell is never contemplated. The Guide is clear that the content of an inspection is that of the relevant MOT. It now appears that the content of the inspection recorded on each of Mr Hazell's records is far from that and I am asked to believe that the two inspections be aggregated in some way to form a single full inspection. If that is the case, how can FA07XEH be signed off as roadworthy by T Hazell on 9 March when 8 defects identified on 7 March have not been rectified? The whole approach is a nonsense and shows an entirely reckless approach by the operator CM Coaches Ltd and the transport manager Michael Hazell.
55. I accept the findings of Vehicle Examiner Hassett that the driver defect reporting is inadequate. That is supported by both his evidence and the defects I have set out above identified on just one vehicle. Michael Hazell contends that these defects have all happened after the driver conducted his walk-round check. If that is the case, FA07XEH must have spent 6 March 2018 in a war zone. I fully accept that the odd defect will occur on the day immediately preceding a PMI, but not that many. His submission is nonsense.

56. An instrumented check of brake performance is required at every inspection and the DVSA Guide details roller brake tests at least quarterly. The analysis conducted by Mr Trott shows that is a long way from being met by this operator, even when tests conducted on a device with an expired calibration are included. Mr Hazell's reference to a problem with the printer is an appalling excuse. As Mr Hassett points out, the figures are displayed on the device and can be manually recorded. I can buy a replacement printer on ebay for £186 and a replacement decelerometer for £400. That is not a lot of money for an operator who is required to show access to over £50,000 to establish financial standing. I find it more likely than not that, where brake tests are not recorded, they didn't happen.
57. Mr Hazell maintains that he sent notice of the vehicle fire to the Central Licensing Office in Leeds. I have had the benefit of having been based in that office for five years and the systems and processes within the "Front End Processing" team are strong such that I would have a high degree of confidence that any document arriving in the building will be scanned to the appropriate licence. It is, of course, entirely possible that the letter got lost in the post. However, that doesn't start to explain why it was sent to Leeds in the first place. Mr Hazell told me that Leeds handles all the DVSA paperwork. Surely Mr Hazell has had enough interactions with the Office of the Traffic Commissioner to understand that it is separate from DVSA. A quick online search of "report PSV to DVSA" immediately brings up form PSV112 which explains that notification is to be sent to the local DVSA office. In this case, that would be Marsh Barton, a literal stone's throw from the operating centre.
58. Mr Hazell's response to the Vehicle Examiner's findings was to seek to apportion blame on others and to attack the integrity of the Examiner himself. That complaint against the Examiner is a matter for the enforcement agency. In making his protestations, Mr Hazell claims that the MOT performance is better than the national average when under his directorship. By his own figures, the company's MOT pass rate is 70%. The overall PSV national test pass rate in 2016/17¹ is 86% on initial presentation and 91.2% after failures that can be rectified at the testing location are removed. This operator's performance falls woefully below those figures, even using the operator's own figures.
59. So there is poor driver defect reporting, disjointed, at best, and poorly recorded vehicle inspections resulting in, amongst other things, a very poor MOT pass rate. All this points to a complete lack of management control by the operator and transport manager, and that is without going back to the earlier performance prior to summer 2017. Mr Hazell's response to having this pointed out to him is to seek to blame others. My response is to find that his good repute as a transport manager is lost.

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/694556/dvsa-com-01-summary-of-annual-tests-for-lorries-buses-and-trailers.csv/preview

The transactions on 29 December 2018

60. All the transactions on 29 December were carried out using the login credentials of Colin Holt although it is accepted by all that Mr Holt knew nothing of that. The account holder's name is clearly visible on the VOL screen so it would certainly have been apparent to all those present, that is Mr Gray, Mr Hazell and Mr Burch. To continue as they did was utterly deceitful.
61. Mr Gray told me that he knew Michael Hazell had resigned as a director "several days" after 10 December 2018. So both he and Mr Hazell knew full well that Mr Hazell was not entitled to sign the TM1 form on 29 December yet both men colluded in doing so, making and allowing to be made a false statement. This goes against the good repute of each and further affirms my finding that Mr Hazell's repute as transport manager is forfeit.

The transfer of ownership of the business

62. Mr Gray refers to the transfer as purchasing a "going concern". At the same time, all the operator's registered services are cancelled. The operating centre does not transfer. No staff transfer. No vehicles transfer. The only "asset", bar the operator's licence, to transfer is the goodwill and specifically two contracts, one with Babcock and the other with First Rail Support. When I asked Mr Gray whether there were clauses in those contracts that required material change to be notified, he did not know. That is despite conducting due diligence, according to his statement.
63. I allowed seven days for the contracts to be provided. They have not been. I have been provided with an email from Mick Coombes at First Travel Solutions which is entitled "CM Coaches Buy Out". In an email to Alastair Gray, he refers to a conversation earlier that day. He confirms that CM Coaches is a preferred operator and that work will continue to be offered as normal. There is no indication whether he is aware of the scope of the transfer – the reference to "Buy Out" suggests that he may believe that the business might continue much as it was. I would not in any case expect there to be a problem with First as I know that Hamilton Gray had previously undertaken rail replacement work. It is clear that Mr Coombes and Mr Gray know each other as the email opens "Hi Alastair". My expectation would have been that First would have provided Mr Gray work in any case. Similar is true with Devon County Council and they have confirmed as much. Alastair Gray is known to the Council through Hamilton Gray.
64. I am seriously concerned that Mr Gray is unable to supply anything in relation to Babcock. That, along with his lack of knowledge of any possible termination clauses, indicates that the contract was actually worth little to Mr Gray.
65. I find that the value in buying the business of CM Coaches did not lie in the contracts as asserted by the parties involved. Devon County Council would always have allowed access to tenders. Likewise, Mr Gray has an existing

relationship with First. There is no evidence that the Babcock contract can continue given the wholesale material change. No contract has been provided to me.

66. I conclude that the only real value in the purchase of CM Coaches Ltd lay in its operator's licence. By buying the company, and the licence, Mr Gray has side-stepped the scrutiny that applies to new applicants.
67. In *Aspey Trucks Ltd 2010 – 49*, the Upper Tribunal comments on the difference between finding a loss of repute in an existing operator and whether or not a new applicant to the industry met the standard to be of good repute:

“In a case such as this, the Deputy Traffic Commissioner was not looking at putting someone out of business. Rather, he was deciding whether or not to give his official seal of approval to a person seeking to join an industry where those licensed to operate on a Standard National or Standard International basis must, by virtue of S.13(3), prove upon entry to it that they are of good repute. In this respect, Traffic Commissioners are the gatekeepers to the industry - and the public, other operators, and customers and competitors alike, all expect that those permitted to join the industry will not blemish or undermine its good name, or abuse the privileges that it bestows. What does “Repute” mean if it does not refer to the reasonable opinions of other properly interested right-thinking people, be they members of the public or law-abiding participants in the industry?”

68. By proceeding as he has, Mr Gray seeks for me to apply the test of whether or not to put someone out of business rather than whether or not to provide my official seal of approval. That cannot be right. It is also not right that the changes proceed without the publication in Notices and Proceedings that gives the opportunity to all to make representations. Because of the approach taken by Mr Gray, even the publication of the public inquiry did not provide notice of the total change in control and operation. It appears as a straightforward regulatory inquiry and refers to the former registered address.
69. Because of the gross failings in maintenance systems and because of the entirely inappropriate sale of the licence, I find that CM Coaches Ltd has lost its good repute.
70. The circumstances here are such that I should normally make a finding of loss of good repute for both Alastair Gray and Michael Hazell as operators and impose a significant period of disqualification. However, the role played by the CPT is troublesome. It appears that CPT had a part to play in bringing the parties together and provided advice to both. CPT was present when the online changes were made. An operator might expect to be able to rely on advice from its trade association. I therefore draw back from taking away their individual repute as operators and do not disqualify each in that respect.

71. The primary issue relating to Mr Holt is that he shared his login credentials. The other matters are too old for him to be held to account and he ultimately did the right thing and resigned from his post. I make no adverse finding but issue a warning to him, and all other VOL account holders, that the account is for them personally.
72. Again, the issues with Mr Poole are rather dated and he told me, and Mr Hazell didn't object, that Mr Hazell had provided assurance that the split inspection process was acceptable. He needed to show more resolve and make his own enquiries. But, on balance, I make no adverse finding in relation to his good repute.

DECISIONS

73. Pursuant to findings under Section 17(3)(e) of the Act, material change, in that virtually nothing remains the same, and Section 17(1)(a), good repute, the licence is revoked with effect from 23:59, 27 April 2019.
74. Pursuant to findings under Schedule 3 of the Act and Article 2 of EU Regulation 1071/2009, Michael Hazell has lost his good repute as transport manager and is disqualified from acting as such in any member state for a period of three years.
75. On a finding of loss of professional competence, I propose to revoke licence PH1140601, Michael James Hazell.
76. A copy of this decision is to be forwarded to the Confederation of Passenger Transport.



Kevin Rooney
Traffic Commissioner for the West of England
25 March 2019