



DECISIONS OF A TRAFFIC COMMISSIONER

**C M Coaches Ltd – PH1132411
&
Transport Manager – Alastair Gray
&
Transport Manager – Colin Holt
&
Transport Manager - Andrew Poole
&
Transport Manager – Michael Hazell**

The Public Passenger Vehicles Act 1981 (as amended) (“the Act”)

**Decisions made in respect of the operator’s licence held by C M Coaches Ltd
PH1132411**

- 1. Adverse findings are made under Section 17 (3) (aa) and Section 17 (3) (c); of the 1981 Act.**
- 2. I do not make an adverse finding under section 17(3)(e) of the Act, change of ownership was notified.**
- 3. The holder of the licence no longer meets the requirement of financial standing under Section 17 (3) (d) and 14ZB (2) (b) of the Act.**
- 4. The operator no longer meets the requirement to be of good repute under section 14ZA(2) and 17(1)(a) of the Act**
- 5. The operator’s licence is revoked with effect from 1st February 2020. For reasons set out below I would entertain an application to postpone the revocation date to allow for grant of a licence by Greenslades Tours (Exeter) Ltd.**
- 6. Michael Hazell is disqualified from holding or applying for an operator’s licence in any traffic area for an indefinite period under section 28 of the Transport Act 1985. The disqualification extends to Michael Hazell being a director, shareholder, consultant, manager or employee of any entity holding an operator’s licence.**

Decisions made in respect of transport manager Alastair Gray

7. Alastair Gray retains his good repute as a transport manager.

Decisions made in respect of transport manager Colin Holt

8. Colin Holt retains his good repute as a transport manager.

Decisions made in respect of transport manager Andrew Poole

9. Andrew Poole has lost his repute as a transport manager and is disqualified from applying or holding any transport manager position for an indefinite period.

Decisions made in respect of transport manager Michael Hazell –

10. Michael Hazell has lost his repute as a transport manager. He is disqualified from holding or applying for any position of transport for an indefinite period.

Background

11. Decisions of TC Rooney involving C M Coaches Ltd and Transport Manager Michael Hazell were appealed to the Upper Tribunal. The outcome of the appeal by was set out in appeal numbers T2019/032 and T/2019/033. The decisions of TC Rooney were overturned with a direction that matters be heard afresh by a different traffic commissioner. The Senior Traffic Commissioner asked that I adjudicate at the rehearing.

12. At the time of the re-hearing on 29 and 30 October 2019 the director of C M Coaches Ltd was Alastair Gray. It held a standard international PSV licence with authority for twelve discs, although only four were utilised at the time of the hearing before me.

13. Prior to the hearing on 29 and 30 October I issued a number of directions with view to ensuring the efficient and fair conduct of proceedings, this included asking for skeleton arguments and statements.

14. In view of the issues that potentially went to repute and integrity I directed that hearings for Exebus Ltd and Greenslades Tours (Exeter) Ltd should not be heard until after publication of this written decision.

15. Aside from what I regard as relatively standard directions for the efficient conduct of proceedings, an email was received from Michael Hazell in which he submitted that the DVSA report for the hearing was flawed and was being considered by senior management, he suggested that I must have all necessary correct data before me on the date of the hearing. Additionally, he told me that he had made a complaint about TC Rooney and suggested that it must be investigated and concluded before the public inquiry before me.

16. In response to the above email I issued a direction to ensure that any fresh evidence from the DVSA was submitted promptly. Regarding Michael Hazell's complaint about TC Rooney, clearly it was not relevant to the new hearing before me, as the Upper Tribunal adjudicated and determined that both appeals be allowed with a direction for a fresh hearing to be held by a different traffic commissioner.

Attendance on 29 and 30 October 2019

17. The following attended the two-day hearing:

- Alastair Gray, both the director of C M Coaches Ltd at the time of the hearing before me, and, the proposed transport manager
- Colin Holt, transport manager and a former director of C M Coaches Ltd
- Michael Hazell, called as a transport manager and as a former director of C M Coaches Ltd
- John Burch, Confederation of Passenger Transport (CPT) regional manager
- Christopher Hilditch, transport manager and a former director of C M Coaches Ltd
- VE Ian Hassett
- Vehicle Enforcement Manager Ross Trott (and VE Hassett's line manager)
- Anthony Hazell, father of Michael Hazell
- Andrew Banks, solicitor, of Stone King Solicitors, representing the operator and Alastair Gray.

18. Andrew Poole was called with view to consideration of his repute as a transport manager, but he failed to attend

Evidence

19. I do not detail all the evidence in this written decision as it is set out in the paperwork and in the event of an appeal it would be in the transcript. I concentrate on what I consider to be key features.

20. I am aware of the cases of *South Bucks District Council and another v. Porter (FC) (2004) UKHL 33* and, *English v Emery Reimbold & Strick Ltd [2002 EWCA Civ 605]* in relation to written decisions generally. I appreciate that I do not need to make findings on every single point at issue and I do not do so. In this specific case I have exonerated a number of individuals who had been the subject of criticism during the earlier (appealed) hearing. I have not gone into great detail as to why I have not made adverse findings although a reading of the transcript would reveal that having heard all witnesses, my findings were logical.

21. Where I have made adverse findings I have reminded myself of the House of Lords decision in *In Re H [1996] 1 All ER 1* where it was made clear that in civil proceedings the standard of proof was always on the balance of probabilities, however the more serious an issue, the more cogent the evidence was needed.

22. Before preparing this written decision I have reviewed the following:-

- Public inquiry brief for the operator's licence for C M Coaches Ltd and for all the individuals listed above who were called with view to my considering their repute as transport manager;

- The Upper Tribunal decision published in C M Coaches Ltd T2019/032 and Michael Hazell T2019/033.
- My notes of the hearing on 29 and 30 October 2019;
- A transcript of the two days of hearings before me;
- Various authorities including those in relation to the approach to regulation, repute, proportionality, and trust:- Thomas Muir (Haulage) Limited v Secretary of State for the Environment, Transport and Regions (1999) SLT 666; Crompton trading as David Crompton Haulage v Department of Transport, North Western Area (2003) (EWCA Civ 64); Muck It Limited and others v Secretary of State for Transport (2005) EWCA Civ 1124; 2009/225 Priority Freight Limited and Paul Williams; 2002/217 Bryan Haulage (No 2); and, Fenlon 2006/277.
- Authority in relation to a limited company holding an operator's licence: Skip It (Kent) Limited 2010/277

Ruling and direction from the Upper Tribunal dated 31 October 2019

23. After the hearing but before I commenced preparation of this written decision I received notification of a ruling and directions from the Upper Tribunal dated 31 October 2019 following an application by Michael Hazell for a copy of the recording of the oral hearing of the appeal on 29 July 2019. A clear warning was set out that it must not be used or copied without the express permission of an Upper Tribunal Judge. This ruling directed that a copy be sent to the Office of the Traffic Commissioner, presumably as it was an appeal against a decision of a TC. I have not read the transcript, it post dates the public inquiry before me on 29 and 30 October. As a TC considering matters afresh, I have carefully read the published Upper Tribunal decision for guidance on potential issues to explore.

Some preliminary issues

24. Preliminary issues included it being confirmed that at the time of this latest hearing, none of the Hazell family held any interest in C M Coaches Ltd, Michael Hazell's sister having recently assigned her shareholding to Mr Gray. It was also established that there was another application for a PSV operator's licence by Greenslades Tours (Exeter) Ltd with Alastair Gray as sole director and proposed transport manager, this had yet to be considered. In my directions prior to this hearing I indicated that that application should not be dealt with until I published my decision in this case, thus enabling an informed decision.

25. Explanation was made in written submissions that Mr Gray wanted to operate PSVs either using the C & M Coaches Ltd licence, or alternatively, a proposed licence for another entity called Greenslades Tours (Exeter) Ltd. Although it was not explicitly said, it appears that this was a recognition that if I wanted to take action against Michael Hazell under section 28 of the Transport Act 1985, I could only do so if the C & M Coaches Ltd licence was revoked. There was some discussion on the implications of Skip It (Kent) Limited 2010/277 which confirmed that a director did not lose repute, instead it was the legal entity holding the operator's licence, specifically a limited company. Action against a director or former director could result in a disqualification under section 28 of the Transport Act 1985 (in the Skip It case it was section 28 of the equivalent goods licensing legislation).

26. Dealing with financial standing it was explained by the new owner of C & M Coaches Ltd that there were finances available for one, but not both, of the two legal entities now owned by Mr Gray. It was (in my view, reasonably) pointed out that on

the C & M Coaches Ltd licence being initially revoked by a TC, finances were taken out of that entity and put into Greenslades Tours (Exeter) Ltd. Mr Gray wanted a PSV licence but was content for me to determine which entity would hold a PSV licence (assuming that I would allow a licence to continue or to be granted).

27. At the time of the hearing before me, there were insufficient funds in C M Coaches Ltd averaged over a 3 month period as set out in the STC's statutory guidance and directions. Theoretically I could grant a period of grace if I preferred the C M Coaches Ltd licence to continue.

28. Similarly my directions indicated that an application involving an entity called Exebus Ltd should await my decision in this case. The director and transport manager for Exebus Ltd were Michael Hazell and Anthony Hazell respectively. I commenced a hearing for Exebus Ltd without knowing that the Upper Tribunal had sat earlier that same week to consider appeals in this case involving C M Coaches Ltd and Michael Hazell. At that hearing I indicated that I regarded it as prudent to await the outcome of the appeal before making a decision in Exebus Ltd. Michael Hazell assured me that the Upper Tribunal found in his favour but I reminded him that I required independent verification of the outcome of the appeal. Whilst eventually there was an adjournment the hearing, this took some time as Michael Hazell asked that I refuse the application for Exebus Ltd so that he could appeal it. I declined to do this as I would be wasting the Upper Tribunal's time, I merely needed to await the Upper Tribunal's decision on the appeals.

29. On the first day of the hearing before me on 29 October 2019 I was told by Mr Holt that he resigned in November 2016 and was replaced by Mr Poole in early December 2016, not December 2017 as set out in paragraph 8 of the Upper Tribunal decision. That minor typographical issue aside, there was no real demurring from the helpful description in T/2019/032 and T/2019/033.

30. In view of the fact that I wanted to avoid rehearing the totality of the evidence from the original hearing, I sought to establish whether there was any disagreement with the full and helpful description of facts set out by the Upper Tribunal. Any alterations were minor, mostly typographical matters.

31. Paragraph 10 (a) of the Upper Tribunal decision refers to VE Hassett commenting on a lack of repair facilities with a site having two shipping containers which contained cleaning materials and "*rudimentary brake facilities*". I was advised by VE Hassett that he was referring to tea break facilities, not vehicle brake facilities. He explained to me that he saw staff sat on buckets turned upside down, drinking tea. There was a table in one of the containers.

32. VE Hassett and VEM Trott told me that at the time of investigation they had not appreciated that undertakings relating to Michael and Anthony Hazell not being involved had been removed.

33. A description of the evidence at paragraph 29 of the Upper Tribunal decision referred to a dispute as to whether or not a specific vehicle, SIG 8434 had been associated with C M Coaches. As a result of explanation and analysis during the hearing before me VE Hassett conceded that he now accepted that that vehicle

might not have been operating on the operator's licence on 9 February 2018, as previously suggested.

34. Christopher Hilditch sought to represent Colin Holt at the hearing before me, I did not allow this, in any event Mr Hilditch was a witness. It would have been clear to both Mr Hilditch and Mr Holt at the end of the hearing that my indication that I would not allow Mr Hilditch to represent Mr Holt did not put either of them at any disadvantage.

35. Michael Hazell made another submission, telling me that he had disputed the DVSA report for a long time, claiming it was "*flawed in various ways, is now being looked at by the Department for Transport*" and he was awaiting the outcome of that. He went on to suggest that DfT might come back to him "*and want to forensically examine the evidence.*" He went on to tell me that "*there's been complaints to the Maladministration Department.*"

36. I responded by pointing out that DfT would be unlikely to have specialist expertise to undertake any forensic examination and in this case the Upper Tribunal had been clear in asking that a different TC look at matters afresh. I advised that if there had been a complaint to DfT that it might want to see my written decision at the end of the day, including findings of fact that I make.

37. Michael Hazell then referred to a company in Blackpool and a decision where he claimed that a TC and a High Court judge got involved where there was an issue over a DVSA report. I pointed out that he appeared to be referring to a recent Court of Appeal decision where the court made a number of comments about the importance of trust in operator licensing. He appeared to be referring to *Catch 22 Bus Ltd & Phillip Higgs v Secretary of State for Transport [2019] EWCA Civ 1022.*

Background and summary of issues set out by the Upper Tribunal

38. Upper Tribunal decisions often set out the background issues involved in determining an appeal, fortunately for me the written decision sets out the evidence, both very comprehensively and clearly. I explored with those present at the hearing on 29 October 2019 whether I needed to hear the totality of all evidence afresh and the extent to which those present agreed with the helpful summary set out in paragraphs 3 to 16 inclusive. Except for a few tiny issues this was agreed. Accordingly I set out the background described by the Upper Tribunal below:

The Background

3. The background relevant to these appeals can be found in the appeal bundle, the transcript of the hearing, the written decision of the TC and the Upper Tribunal's decision *T/2014/53/54 Carmel Coaches Limited, Anthony Grove Hazell and Michael James Hazell* (which should be read in conjunction with this decision in relation to Mr Hazell) and is as follows. Mr Hazell had been a director of Carmel Coaches Limited along with his father, Anthony Hazell and his sister, Carolyn Alderton. At the same time, Mr Hazell held his own operator's licence trading as "Hirethisbus". He was the nominated transport manager for both licences. The licences were revoked in June 2014 and Mr Hazell and his father

lost their good reputation as directors and as transport managers. Both were disqualified for a period of 18 months. The regulatory action was taken as a result of serious and sustained failings in maintenance systems including prohibitions (two being “S” marked), a poor MOT pass rate, failure to adhere to the declared PMI intervals and an ineffective driver defect reporting system. Little improvement had been effected despite two unsatisfactory maintenance investigations and an adjournment of the public inquiry. In addition, Mr Hazell had been unlawfully lending vehicle discs issued to his sole trader licence to Carmel Coaches which continued despite notice being given to him that the lawfulness of his actions was in issue. In determining the appeals, the Upper Tribunal concluded that it was a “*very bad case*” and that the facts demonstrated a “*wilful disregard of the need to ensure regulatory compliance*” on the part of Michael and Anthony Hazell. Further, the Upper Tribunal was unimpressed with the TC’s decision to grant a sole trader licence to Ms Alderton trading as Carmel Bristol. Following the dismissal of the appeals, the TC’s order came into effect from 14 November 2014.

4. In the interim, CM Coaches Limited made an application for an operator’s licence in August 2014. Because of the significant similarities between the application and the Carmel Coaches operation and the suspicion that the application was simply a replacement for the revoked licence, the application was called to a public inquiry. Colin Holt and Christopher Hilditch were the directors although Carolyn Alderton held 90% of the shares. Colin Holt held the remainder and he was also the nominated transport manager.

5. The application was granted for fifteen vehicles on 9 February 2015 with undertakings prohibiting Mr Hazell and his father from having any involvement in the business. On 9 June 2016, Ms Alderton was added as a director. The prohibition in respect of Mr Hazell was removed in August 2016 and the prohibition in respect of Anthony Hazell was removed in December 2016.

6. It is common ground that as soon as the disqualification order relating to Mr Hazell came to an end, he started driving for the company and when the prohibition against his involvement in the company was removed, Mr Hazell became involved in the operation of vehicles. On 19 November 2016, both Mr Hilditch and Mr Holt resigned as directors and Mr Holt resigned as transport manager. The resignation letter of Mr Holt complained that he and Mr Hilditch were being prevented from moving the business forward and in particular with regard to the operation of a new registered service. He went on to state:

“In this regard CM Coaches has too many negative connections, many of the people who may supply work see us as connected to the old Carmels Coaches (sic) and this is hard to get past. We

are dependent upon DCC and with Chris have tried to direct the business towards a commercial bus future that insulates the company with revenues beyond those who are not friends to us. ... I have been very concerned for some time about the future and the intent of Mr Mike Hazell, it is clear to me where this is going and I feel that the direction that is being promoted is not where I feel it should be ..”.

The resignation letter of Mr Hilditch informed Ms Alderton that he had been instrumental in obtaining the operator’s licence and that he and Mr Holt had worked hard to run a quality and professional operation. However:

“.. we are both concerned that the company has become a zombie operation, existing simply to pay wages. .. we have sought to ensure standards are maintained and that the fleet has been looked after but it has become clear to me that decisions made are not in the control of Colin Holt and myself as the functional directors. This is not how it should be in such a business, as it is now I feel that I have done what I can but that the direction of the company is no longer being guided by myself and Colin ... I cannot support the direction I see coming and that I do not want to be associated with that policy, to be responsible without input. Mike Hazell has indicated to me he feels he should join the board towards the end of this year and that leaves the directors in position without authority ..”.

7. In his unchallenged evidence to the Traffic Commissioner on 4 March 2019, Mr Holt confirmed that he had concerns about Mr Hazell’s involvement in the business at a time when the prohibition remained in force. Mr Hazell had already obtained a new sole trader licence and was operating close by. As the operating centre was in the immediate vicinity of DVSA premises, such involvement would have been “*highly visible*”. When the prohibition against Mr Hazell’s involvement in the business was removed, Mr Holt then became concerned about Mr Hazell’s influence on the business. Mr Holt considered that Mr Hazell was preventing the directors from moving the business forward. That was borne out in Mr Holt’s view, by a telephone call he received from Mr Hazell during the evening of Mr Holt’s resignation. Mr Hazell stated that Mr Holt’s resignation made things difficult for Mr Hazell and his father as they wanted to apply for new operator’s licences.

8. Mr Holt was replaced as transport manager by Mr Poole in early December 2017. Mr Hazell became a director on 7 July 2017. Ms Alderton then resigned as director on 26 January 2018 but continued to hold 90% of the shares. Mr Poole resigned as Transport Manager with effect from 21 March 2018 and by an application dated 26 February 2018, Mr Hazell nominated himself

as transport manager. That nomination was added to the licence on 25 April 2018. The delay is unexplained.

9. On 5 February 2018, vehicle FJ06 BNZ caught fire whilst transporting children to school which resulted in an evacuation of the children onto a busy carriageway (Mr Hazell takes issue with the use of the adjective “*busy*”). A video of the incident was placed on social media by one or more of the passengers. This serious incident was not reported to the DVSA either by Mr Poole or Mr Hazell in accordance with the procedure set out in PSV112 (which requires reporting to the DVSA within 24 hours and which prohibits work being carried out on the vehicle concerned until the DVSA has had an opportunity to examine it).

10. The DVSA did however learn of the fire and that triggered an unannounced maintenance investigation. The outcome was “unsatisfactory” for the following reasons:

- a) The stated operating centre in Grace Road West, Exeter had been closed for some time without the TC having been informed. However, Companies House records had been updated in January 2018 to show the correct address. Vehicle Examiner (“VE”) Hassett visited the compound which was now being used as an operating centre on several occasions but no staff were found on the premises and no repair facilities existed save that there were two shipping containers which contained cleaning materials and “*rudimentary brake facilities*”;
- b) VE Hassett had noted that vehicles operated by CM Coaches were often in the yard of Carmel Coaches in Northlew and so he called there on 12 June 2018. The office staff provided copies of maintenance records and confirmed that the Carmel workshop was carrying out the maintenance for CM Coaches. This was contrary to the stated maintenance arrangements recorded on the operator’s licence which were declared as “*in house*”;
- c) On 2 July 2018, VE Hassett attended the compound in Exeter where Clive Eldridge, a mechanic connected with Carmel Coaches was working. He let VE Hassett into the office of Unit 65 Marsh Green Road and provided all of the visible maintenance files to VE Hassett to inspect. VE Hassett inspected seven vehicle files and scanned the contents. He noted that there were gaps of up to 14 weeks between PMIs when the declared interval was six weeks;
- d) There was a Bowmonk decelerometer at the site in Exeter. The calibration certificate had expired on 17 May 2018. The signing fitter on the PMI sheets was often Clive or “*Steve*” who was based at Carmel Coaches in Northlew and yet the meter was in Exeter. VE Hassett concluded that either the meter was taken to Northlew or the

inspections were taking place at a location without facilities;

- e) Maintenance was being undertaken using two sets of PMI sheets for the same inspection with defects being identified on the white set (first in time) which were not endorsed as rectified or signed off and then other defects being identified on the blue set (and not the same defects as those identified on the white set) often with the vehicle travelling about 30 miles between the two sets of inspections. VE Hassett recalled an encounter with the Hazell family a number of years before his present investigation when a remark was made that “*they*” were going to stop putting defects on the PMI records if it was going to result in “*trouble*”. VE Hassett suspected that it was never intended for the white PMI sheets to be seen by the DVSA;
- f) VE Hassett found many and significant discrepancies and failures in respect of PMI inspections (quite apart from e) above). By way of example: inconsistent mileage recordings; repairs undertaken for defects not identified on driver defect reports or during the PMI itself; a VOR system that was clearly not working with missing and inconsistent mileage recorded in relation to VOR declarations and an absence of first use checks following a vehicle being VOR'd; the use of vehicles whilst VOR'd; lack of brake testing records and a failure to undertake roller brake testing in line with the recommendations in the DVSA Guide to Roadworthiness; PMI sheets were not being signed off;
- g) Three vehicles were inspected during the visit and advisory notices were issued for out of date First Aid kits and fire extinguishers;
- h) All of the vehicles seen by VE Hassett were displaying the incorrect legal lettering. The fitter was informed. However, three vehicles seen by VE Hassett on 14 November 2018 were still displaying the incorrect information with regard to the business address.
- i) The MOT first presentation pass rate was unsatisfactory. There had been 36 tests with 16 fails including PRS and 5 brake fails resulting in a 44% fail rate.
- j) Between June 2015 and February 2017, five immediate PG9's, two delayed PG9's and two advisory notices had been issued to vehicles being operated by CM Coaches.

VE Hassett was also concerned that CM Coaches, Carmel Coaches and Carmel Bristol (the sole trader licence of Ms Alderton) were in fact operating as one entity as staff at Carmel Coaches referred to the separate operations as “*branches*” when answering the telephone.

11. On 25 October 2018, Mr Hazell submitted a detailed response to the PG13F&G which failed to address many of the real concerns raised by VE Hassett. He did not consider the maintenance investigation to be an “*honest and fair review*” and submitted that too much reliance had been placed on “*guesswork*”. He was critical of VE Hassett’s failure to distinguish between failures in systems when Mr Holt and Mr Poole were transport managers as compared to Mr Hazell’s performance as transport manager, which he described as being above the national average. Mr Hazell incorporated into his response, The Civil Service Code and made a clear attack upon VE Hassett’s honesty, integrity and “*capability and professional conduct*”. He wished to see the digital data gathered by VE Hassett when he attended the operating centre on 2 July 2018.

12. On 10 December 2018, Mr Hazell, using Colin Holt’s log-in details to access the VOL system, notified the Office of the Traffic Commissioner (“OTC”) of his resignation as director and transport manager of CM Coaches. On 11 December 2018, the OTC wrote to CM Coaches regarding the company’s apparent lack of professional competence and absence of any directors, giving the company a deadline of 1 January 2019 to rectify the position. On 29 December 2018, various on-line changes were then made in respect of the licence, with Colin Holt’s log-in details being used: Mr Hazell submitted an on-line TM1 form in his purported capacity of director (when he had resigned nineteen days before), nominating Alistair Gray as transport manager; an additional operating centre at 3 Budlake Road, Marsh Barton Trading Estate was added; the nominated maintenance provider became Budlake Commercials Limited with the same address as the new operating centre; all CM Coaches vehicles were removed from the licence and five vehicles previously operated by Hamilton Grays (Devon) Limited (“Hamilton Grays”) were specified. On the following day, Mr Gray (who had previously been a minority shareholder of Hamilton Grays and the nominated transport manager) was registered as a director at Companies House.

13. On 8 January 2019, the OTC wrote to the company indicating that the TC was minded to suspend the operator’s licence for lack of professional competence, the absence of any director details on the licence and lack of financial standing. The TC was concerned by the application to nominate Mr Gray as transport manager because of his links with the operator’s licence of Hamilton Grays which had been revoked with effect from 31 October 2018. Following a telephone conversation between Mr Hazell and Mr Huggins, Senior Team Leader at the OTC, the letter was withdrawn and

Mr Hazell was informed that the licence was to be called to a public inquiry.

14. The TC then received a letter from John Burch, South Western Regional Manager of the Confederation of Passenger Transport UK dated 10 January 2019 to explain the circumstances leading up to the TC's decision to hold a public inquiry. Mr Hazell had informed Mr Burch in June 2018 that he wished to exit the road transport industry and was training to become a commercial pilot. Whilst that would take some time to complete, he was scaling back the CM Coaches operation in order to reduce the level of financial standing required in order to facilitate the disposal of the business. The licence of Hamilton Grays was revoked in July 2018 and the company had been given to 31 October 2018 to submit a new application. Then in September 2018, Mr Gray informed Mr Burch that he had decided to submit a new application for a licence and then sought advice as to how to retain some valued clients of Hamilton Grays in the interim. It was then that Mr Burch advised Mr Gray that he knew of a possible opportunity to buy an existing operation to which he responded favourably. Contingency plans were made to cover the work that Hamilton Grays wished to continue with. Discussions then took place from early November whilst Mr Gray met with the Compliance Manager of Devon County Council to seek approval for the acquisition. It was also important to make a decision as to when the finances "*under Mr Hazell's control*" could be separated from the new owners. On 19 December 2018, Mr Burch accompanied Mr Gray to a public inquiry into Linden Holdings Plc to satisfy DTC Harrington that there was no link between that company and "*Mr Gray's planned continuation*" (it is unclear whether Mr Gray's proposed acquisition of CM Coaches was mentioned at that stage). In any event, with that cleared up, Mr Hazell then resigned as director and transport manager in anticipation that Mr Gray would be appointed within the statutory period. Following the OTC direction that a transport manager be in place by 1 January 2019, Carolyn Alderton immediately contacted the OTC (but her explanation was not considered by the TC as she was not a director of the company).

15. It was considered essential that the deadline given by the OTC should be met and so Mr Burch, Mr Hazell and Mr Gray met on 29 December 2018 and used the VOL system to make the necessary changes to the licence. They had no choice but to use the log-in details of Colin Holt as they were the only ones that Mr Hazell had. All matters were proceeding forwards with the first payment for the company due on 8 January 2019 when Mr Hazell received the "propose to suspend" letter from the OTC.

16. By call up letters dated 28 January 2019, CM Coaches and Mr Hazell, Mr Holt and Mr Poole (as transport managers) and Mr Gray (as director and proposed transport manager) were called to the public inquiry listed for 4 March 2019.

VE Hassett's notebook

39. One of the issues raised at the original public inquiry and referred to in the Upper Tribunal decision related to VE Hassett's notebook, it was because of this that I issued directions that a redacted copy be produced. Mr Trott confirmed that he personally undertook the redactions. On my questioning Mr Trott about it being copied to all relevant parties, I was told that as a result of the ongoing complaint regarding conduct, DVSA Corporate Office had instructed that at that time there was to be no direct contact with Mr Hazell. VE Hassett's integrity had been questioned and there was a need to ensure that he not be perceived as interfering in evidence.

40. No small part of the hearing before me involved VE Hassett reading through his notebook, it was evident that the notebook was used to record very basic information such as that relating to start and end of a day together with the subject matter of investigation. There was a paucity of detailed information in relation to investigations. In part this related to the fact that DVSA investigators utilise pro formas to ensure that they address matters in accord with standard instructions. My assessment of evidence from Mr Hassett's notebook is that it had no additional probative value to the hearing before me.

Evidence relating to the sale of C M Coaches Ltd

41. One of the key features of the original PI before TC Rooney which was analysed by the Upper Tribunal related to whether or not nefarious behaviour was involved in the various changes of director, transport manager and ownership of C M Coaches Ltd. In the event, having heard from Colin Holt, Christopher Hilditch, John Burch, Michael Hazell and Alastair Gray, I am satisfied that there is no justification in criticising anyone on these issues.

42. Colin Holt and Christopher Hilditch described in some detail the chronology in relation to their involvement, as I do not make adverse findings in relation to their involvement, I do not consider it relevant to go into any great detail describing this part of the evidence. As at the date of the latest hearing before me, none of the Hazell family owned any shares or had any legal entitlements in respect of C M Coaches Ltd. This allows me to concentrate on the key issues which relate to the DVSA investigation, the integrity or otherwise of the principal investigating officer, VE Hassett, and those members of the Hazell family who attended to give evidence.

43. On my questioning Colin Holt and Christopher Hilditch on quotations from resignation letters cited by the Upper Tribunal at paragraph 6 of its written decision, they both referred to their business model being very different to that of the Hazell family. Here they were referring to the type of work to be undertaken and described how the differences were purely business ones. This was also described by Mr Hilditch who told me about the work that he and Mr Holt wanted C M Coaches Ltd to undertake. He told me that he was referring to the new public service vehicle access regulations that were to come into effect, they wanted to get ahead of the game and change the vehicles used so that they were low floor double deckers which were

DDA compliant. The majority shareholder (Carolyn Alderton) had a different view and that is why they sought to part company.

44. Michael Hazell pointed out that he made a comment about the resignation making it difficult, but this was because he and his father were applying for new licences. At that time he had what he told me was a vague idea to do something else. This related to a potential different career as a pilot.

45. Mr Banks representing Alastair Gray pointed out that although the Upper Tribunal indicated that Mr Gray failed to point out to the TC what he was doing, there was a letter which did just that and was in the original bundle. He suggested that as a result of the multitude of paperwork, it was overlooked by the Upper Tribunal.

46. Mr Holt explained the issue of his log in details being used by others without his knowledge. It emerged that when Mr Holt resigned, his letter of resignation was to Carolyn Alderton and she attended the office when he passed on a photocopy of his work diary with details of various things including contact details, telephone numbers, passwords and access codes required for C M Coaches Ltd. The VOLS log in details were included in the diary.

47. John Burch, CPT South West Regional Manager gave helpful evidence and answered questions. I pointed to his letter referring to not disclosing commercially confidential information, but this was something that TCs regularly received from solicitors and others. As regulators of the industry it was not unusual to be told of potential plans by those who sought to keep TCs informed of sensitive information. In view of Michael Hazell's poor history (as described in paragraph 3 of the Upper Tribunal decision), it was clear to me that in future Mr Burch would not seek to keep such information away from the regulator.

48. Another difficulty faced by Mr Burch in attempting to help his CPT member was that the access log in codes for VOLS were not in the correct name. I was reminded that a letter had been received which led Mr Burch and others to believe that the licence was about to be revoked if a new transport manager was not in place by 1st January 2019, it was not appreciated that some TC staff were still working in the few days between Christmas and New Year. Whilst it was perhaps understandable that the log in details were used, albeit in good faith and in extremis, someone should have contacted the TC office after the Christmas / New Year break to explain that the VOLS log in details were for the wrong person and changes were required.

49. Some other areas of evidence were explored, for example Mr Alastair Gray produced redacted bank statements to me, he was under a mistaken belief that as a result of GDPR that he was required to avoid providing details of young passengers who were carried in vehicles. As I pointed out, TCs require unredacted statements for a variety of reasons, indeed sometimes statements are falsified (there was no suggestion of this in this case, of course).

50. Concern was expressed by the Upper Tribunal that a nomination was signed by Michael Hazell as a director of C M Coaches Ltd, when he did not hold that position. Alastair Gray told me that both he and Michael Hazell had thought that Michael Hazell was a director at the time. The paperwork relating to change of director was

submitted over the Christmas holiday period and they mistakenly thought that it would not be actioned until the New Year.

51. The above section is a shortened summary of the evidence in view of the fact that I do not make formal adverse findings on the sale of the business.

Transport Manager Andrew Poole

52. Andrew Poole gave evidence at the first hearing but failed to attend before me at the reconvened hearing, Mr Hilditch suggested that this was because he no longer worked in the industry.

53. During the public inquiry before me I referred to Andrew Poole's apparent concern about C M Coaches Ltd, I also referred to case law indicating that if a transport manager had such concerns then he should adopt a two-stage approach, first writing to the directors expressing his concerns; the second stage was to write to the TC to resign if improvements were not made. Andrew Poole had not done this.

54. VE Hassett confirmed that some of the issues of concern to the DVSA arose from the time when Andrew Poole was transport manager.

55. Mr Hilditch told me that he had asked Andrew Poole whether he was aware of EU Regulation 1071/2009, but he did not seem to know what it entailed. Mr Hilditch told me that he explained EU Regulation 1071/2009 to him.

56. The brief for the hearing included correspondence between VEM Trott and Andrew Poole relating to a complaint about a prohibition. I commented at the hearing on the fact that it appeared to relate to an issue that would have been addressed in the DVSA publication, *Categorisation of Defects* and Andrew Poole would have benefitted from knowing about this publication. At the hearing before me the DVSA witnesses confirmed their correct application of prohibitions, I accepted that they were correct.

Evidence involving VE Hassett, Michael Hazell and maintenance records

57. VE Hassett's line manager, Mr Trott, confirmed that as a result of the ongoing complaint regarding VE Hassett's conduct, DVSA Corporate Office had instructed them that they must not correspond directly with Michael Hazell, VE Hassett had not been shown a copy of the Upper Tribunal decision (although I pointed out that it was a matter of public record).

58. It was evident to me that VE Hassett was under stress, he told me that he was now working part-time and had partially retired.

59. Describing what happened when he visited premises owned by Carmel at Northlew, the mechanic who was at that time working for C M Coaches Ltd was an individual called Clive who was personally known to VE Hassett for a number of years, they had known each other amicably. At the time transport manager Michael Hazell was away on a flying course and could not be contacted, he was training to be a pilot.

60. Maintenance records were logged by the examiner for seven vehicles, they were scanned. Instead of taking the paperwork with him, VE Hassett chose to scan copies

to avoid hampering ongoing maintenance of vehicles. This also enabled analysis at leisure in the examiner's office.

61. It was confirmed that VOR sheets were checked, PMI records revealed gaps in maintenance of up to 14 weeks, the PMI period should have been six weekly. The age of vehicles is relevant factor in assessing a PMI period, so I asked how old they were; I was told most were registered from 1998 to 2008.

62. Michael Hazell told me that there were occasions when a vehicle would have had an MOT after being off road for a time, suggesting that this was the equivalent of a PMI record. I pointed out that an MOT was very different to a PMI, theoretically a vehicle can pass an MOT and still be subject to a construction and use offence, MOTs were arbitrary lists of vehicle checks and less comprehensive than PMIs.

63. It was claimed by Michael Hazell that there were three occasions when he could not produce paperwork proving a PMI, but claimed they were completed. I pointed out the obligation was to not merely maintain vehicles, but to ensure proper records were available for inspection by an enforcement body.

64. The issue of brake testing, or the lack of proper brake testing, was explored. It was confirmed that the operator did not have a rolling road brake tester and the calibration certificate for a decelerometer had expired. It was pointed out to me that the signing fitters included one who was based at Carmel, Northlew, yet the meter was in Exeter. Either the meter was physically transported to Northlew each time it was used at inspections, or the inspections were being carried out in Exeter where there were no facilities for maintenance.

65. Concern was expressed by the examiner at what was an apparent miss-recording of mileage. One vehicle had apparently travelled 3000 miles in four days. There was inconsistency in record-keeping.

66. The lack of measured brake tests was discussed. Michael Hazell told me that there were about four rolling road brake tests carried out on vehicles each year, he conceded that he was unable to produce evidence of rolling road brake tests for a period in excess of six months from November until June. I pointed out to Michael Hazell that the Upper Tribunal referred to testing the evidence of the examiner if it was in dispute, however Michael Hazell conceded to me that he could not produce any new evidence of rolling road brake tests for the above period.

67. Michael Hazell told me that "*I hold my hands up to it, I missed that*" referring to the calibration certificate expiring. He then went on to confirm that he believed that the brake test would have been done, but conceded that "*I can't tell you where the recorded figure is unfortunately.*"

68. I pointed out that he had been casting aspersions on the integrity of VE Hassett, Michael Hazell responded that this was on certain elements of the examiner's report, not all of it.

69. Referring to relatively high mileage in a short period of time, Michael Hazell suggested that in one day a bus could travel 700 miles in work for the Ministry of

Defence, however on my asking for evidence of this, I was told “*I’ve probably got it somewhere.*”

70. Mr Trott reminded me that the mechanic had pointed out that the calibration certificate had expired.

71. I sought to test VE Hassett on his evidence relating to the dual PMI records. Referring to vehicle FN52 HOR and apparently inconsistent PMI records conducted on different dates. One record dated 11 May 2018 was on a white sheet, with a blue sheet on 16 May 2018, four days and 395 km later with no mention of defects or brake repairs. On my pressing VE Hassett, he told me that he did not know which set of records to believe, adding that he would expect the file for a vehicle to have a record of brakes being attended to and recorded with a measured test.

72. Mr Trott confirmed that he’d been an enforcement manager for 11 years, with previous experience as a vehicle examiner, he had 15 years experience in total. He confirmed that having read the examiner’s report that it would be his professional view that the divergence revealed evidence of false records.

73. Michael Hazell interjected to comment that in many cases the white sheet was stapled to a blue sheet, they were not hidden away during the visit. He pointed out that if “*if I didn’t want a DVSA examiner to see something I’ve got very good ways of hiding things*”, he went on to say that he would not put them in a vehicle folder.

74. Mr Trott confirmed that he’d been a mechanic, a fitter or a vehicle examiner for probably 30 years and had never seen two sets of service records being used as in this case, doubling the paperwork. The record one undertakes should be of the inspection with details of remedial action and then filed. The maintenance records in this case did not follow a logical sequence.

75. Another record with apparent discrepancies was discussed, it had been listed on a VOR report 6 September 2017 to 16 September 2017 as being on loan to Stamps Coaches, I asked if there was any written agreement confirming the loan arrangement. Michael Hazell told me that there was a written agreement but he had not produced it before me. or shown it to the DVSA. I pointed out to Michael Hazell that the 13F & G had referred to this and so he was given notice by the DVSA that it was a concern and had an opportunity to address this by way of rebuttal.

76. It was confirmed that where there were two sheets, the white sheet always predated the blue one. Furthermore consistently the white sheets had more defects than the blue sheets.

77. Further evidence of inconsistencies between white sheets and blue sheets were provided, as set out in the Upper Tribunal description of the background to this case.

78. Michael Hazell referred the fact that there were advisories rather than prohibitions resulting from the fleet inspection, this being a relatively positive feature. There was also discussion on the fact that whilst the examiner described the driver walkaround checks as not satisfactory, it was not a case of there not being any driver defect reporting at all.

79. The MOT test history was referred to by Michael Hazell, claiming that this was a significant positive feature. A problem in dealing with this issue is the that that records of MOT pass or fail rates for PSVs are incomplete in view of the fact that vehicles are not specified for PSV operator licensing, furthermore many PSV operators have more vehicles than discs.

80. VE Hassett confirmed that he had known the mechanics for several years and they gave the clear impression that they were maintaining both fleets, in other words both those for Carmel Coaches and C M Coaches Ltd.

81. It was pointed out that at the time of the visit there was a declaration on file that repairs and maintenance were carried out in-house, this could not have been the case because they did not have facilities. VE Hassett told me that he clearly remembered his last encounter with the Hazell family some years ago when they remarked that there were going to stop putting defects on records if it was going to result in trouble. On being asked by Michael Hazell who had said this, VE Hassett confirmed that it was his father, Anthony Hazell.

82. Michael Hazell queried this "*I'm just saying that that could be made up.*" I indicated that I would come to a finding of fact on this.

83. It was confirmed by Mr Trott that DVSA notebooks did not provide detailed evidence of individual cases as the DVSA sought to use digital technology, capturing data in real-time. Considerable time was spent reading through the notebook with occasional interjections from Anthony Hazell. I reminded Anthony Hazell that he could give evidence later, he responded "*sorry, couldn't help it.*"

84. The outcome of investigation was described by Mr Trott with an electronic copy provided, a paper copy should have been sent automatically by the DVSA office in Swansea once the case was logged. It transpired that the address on the licence was not one that was currently being used, hence it may not have been seen by the operator. However it was sent to the address which was recorded on the licence at the time. Another copy was sent later.

85. VE Hassett's notebook, whilst not providing detailed evidence of the investigation, did assist in illustrating his clear frustration dealing with C M Coaches Ltd, there were comments "*fannyng about again.... Timewasting tactics*", he explained to me that he was being bombarded with freedom of information requests.

86. Michael Hazell explained to me that he had asked for raw data that had been used to compile the examiner's report, he told me he wanted to cross-reference it for his records. It was pointed out by me that what he sought to do could have been gleaned from the PG13 F and G, but Michael Hazell told me that he wanted to see if there were any errors.

87. I pointed out to Michael Hazell that whilst he had made a number of requests relating to raw data, they appeared to be a fishing expedition to look for inconsistencies from the DVSA.

88. One area of evidence that took up some time related to a report produced by Michael Hazell during the first day of evidence, this included paperwork on his existing processes for brake testing vehicles, it was an endeavor to demonstrate that he was now checking vehicles properly. Mr Trott, who is a collision investigator for four police forces, sought to contradict Michael Hazell's evidence on the basis of DVSA best practice guidance on brake testing. However first thing on the second day of evidence Mr Trott sought to retract his criticism on this point, indicating that having double checked overnight, DVSA best practice guidance had very recently changed. An explanation was given for the initial criticism and also for the reason for the change in policy on interpretation, it is not regarded by me as being of probative value and so it is not described in detail. In the event of any appeal full details would be in the transcript.

89. One point that merits mention is that Michael Hazell told me that he took a vehicle off the road as soon as Mr Trott had suggested that brake testing was inadequate on the first day of evidence, it is regarded by me as both relevant and a positive feature.

90. Michael Hazell claimed that the arrangement for maintenance was in-house as individuals were employed by C M Coaches Ltd. I pointed out that if maintenance was internal a TC would expect it to be within the operator's premises.

91. It was claimed by Michael Hazell that he had obtained advice from the CPT on whether or not someone working for C M Coaches Ltd was internal or external. He claimed that he asked questions of the CPT and was following its professional advice. Evidence to corroborate advice on the CPT was not provided, later John Burch from the CPT asked to comment on Michael Hazell's evidence on this point.

92. It was explained by John Burch that Michael Hazell contacted him on 26 June 2018, as he was his South West Regional Manager and they talked frequently. He had a very clear note that he gave advice at the time. He went on to be very clear to me that at no stage would he ever advise an operator who was changing maintenance arrangements, to do so without some form of contract. He was keen that he was not misunderstood on this and emphasized that the TC always needed to be kept informed.

93. Michael Hazell responded claiming that he had obtained advice from a CPT official in London, not from John Burch.

94. Questioning of VE Hassett by Michael Hazell illustrated his (Michael Hazell's) lack of appreciation as to what was in a PG13 F & G. It was explained that the records were a substantial concern, it is accepted that no prohibitions had been issued on the fleet check. Michael Hazell was reminded of his response to the PG13F & G which included references to a lack of professionalism and a claim that he was familiar with the Senior Traffic Commissioner's 13 statutory documents.

95. One of the many concerns on comments from Michael Hazell related to his apparent lack of appreciation that the OCS system was merely a risk scoring system for internal DVSA use, if an operator sought to demonstrate compliance Earned Recognition was the mechanism to use.

96. There was full discussion on the PG13F & G, together with the operator's response and the apparent lack of transparency from Michael Hazell.

97. At one point Michael Hazell appeared to be questioning Mr Trott who interjected to explain that the DVSA have a duty to investigate complaints and so he and the Regional Manager at the time visited to attempt to get to the bottom of concerns; unfortunately during that meeting records were not available for them to analyse fully.

Explanations as to the use of dual records by C M Coaches Ltd – white and blue sheets

98. Anthony (Tony) Hazell gave detailed evidence and answered questions on the second day of evidence. He told me that he had bought his first coach 40 years beforehand and had been an operator for 35 years, he had been around a long time. He claimed that for many years he had dealt with VE Hassett's predecessors and enjoyed a long relationship.

99. On being asked to explain what had happened, Anthony Hazell told me *"my firm, Carmel Coaches, took over the maintenance of C M Coaches because they'd dispensed with their workshop and had no facilities for underneath inspection."*

100. On his father making this comment, Michael Hazell sought to interject but I explained that he could ask him questions later. Anthony Hazell explained *"we came to an agreement where we would let C M Coaches use our premises for their underneath inspections and also it would be assisted by a contractor who works for us and who was quite agreeable to working for C M and helping them with this maintenance work. So basically what we arrange to do is Clive, a C M employee in Exeter, would inspect the topside of the vehicles. He would check all the seat belts, the lights, wheel nuts, and as much as he could without the use of a pit. He would then fill out an inspection form as far as he possibly could... It was a white form. No significance in that, just happen to be white."*

101. Anthony Hazell went on: *"he obviously couldn't complete all the sections of this form because some of them related to items underneath the vehicle that he couldn't adequately examine. After he'd done that the vehicle would be transferred to my workshops at Northlew where we have very adequate inspection facilities and equipment. Steve, the fitter normally working at Northlew, would check the vehicle over again and concentrate on the underside. He would then, on completion of his inspection, complete an inspection form which he used as a tachograph which is a blue copy, a blue piece of paper. So the vehicle was then adequately inspected and normally it would be Steve that would do the brake test, although sometimes if the Bowmonk machine was at Exeter, Clive was quite capable of doing it, but I think more often than not it was done in Northlew."*

102. It was clear that Anthony Hazell felt that the system he was describing was a good one and told me *"An advantage of this scheme is that two people inspected the same vehicle so we had two fresh sets of eyes looking at it and it did encourage a little bit of competition because Clive would say to me,, "I've got to write everything down on this form. I don't want Steve to find out... Find anything I've missed."* Now when the vehicle came to Northlew and Steve would look at it and he'd say to me,

“Oh, I can bet I can find something Clive’s missed. I’m gonna have a good look to see what I can find”

103. Anthony Hazell gave his view on this system *“So with two sets of eyes giving this vehicle a vigorous inspection the result was that very few, in fact seldom, was a defect ever left undetected. I consider this good practice.”*

104. It was then made clear to me by Anthony Hazell how he felt that he was better qualified to make this assessment than Vehicle Enforcement Manager Mr Trott: *“although Mr Trott says he’s never heard of any such procedure in all his days, well he’s only a youngster. There’s plenty of time for him to find out things like this. So I just want to get his confirmation now and Mr Hasset’s that they are satisfied with this procedure and in no way was any falsifying of documents.”*

105. I told Anthony Hazell that I was not satisfied with his procedure and asked if he had read the Guide to Maintaining Roadworthiness, he told me that he had.

106. It was explained by me that the Guide to Maintaining Roadworthiness sets out a procedure to ensure that enforcement bodies could see who was inspecting, when it was done, with full details including rectification.

107. Mr Trott expressed what he described as very serious concerns about the process of having two people doing an inspection like this. He commented that if one was undertaking a safety inspection then it was not simply a case of doing a topside and a bottom side inspection, the two must be worked together. There were two different operating systems that needed to be operated from the driving control and the topside would need to be examined from the underside of the vehicle, he referred to brake chambers and steering mechanism.

108. Anthony Hazell responded that the inspections were not done without assistance, at Northlew there was another apprentice/helper that would work the controls.

109. I pointed out that whilst he suggested that Mr Trott was a young person who would learn, he had been in the industry for a large number of years and was very experienced. I also commented that in my time as a TC I had never known of an operator trying to put forward a maintenance regime whereby part of the vehicle was tested in one place, with another part tested in another place. I referred to the need to not only having vehicles in good condition, but to the need to produce records that demonstrate good maintenance with driver defect reports and PMI sheets showing coherent audit trails with rectifications. I did not make comment on the point that the two inspections were often conducted several days apart with different mileages.

110. Anthony Hazell was reminded that although he described himself as experienced and was suggesting that he had greater expertise than Vehicle Enforcement Manager Mr Trott, Judge Beech described him (Anthony Hazell) very differently, referring to a *“bad case demonstrating a wilful disregard for the need to show regulatory compliance on the part of Michael and Anthony Hazell.”* I reminded Anthony Hazell that I had not met him until this latest hearing, but it was clear that he could not justifiably claim that he had a good record.

111. Anthony Hazell conceded that *“perhaps that was a bit of a flippant remark but I was trying to emphasise how our system worked.”*

112. I then pointed out *“or not worked as the case may be”*.

113. At this Anthony Hazell commented that he saw no problem with two fresh sets of eyes looking at a vehicle. I agreed that there was nothing wrong with a safety inspection with spot checks by others.

114. Both VE Hassett and Mr Trott were asked if they had ever known of PMI's split in the way described. VE Hassett confirmed that in his 18 years as a vehicle examiner and having been in the motor trade since 1971, he had never known of maintenance being split as described. Mr Trott gave a similar response, he had been in the motor trade for 24 years.

115. VE Hassett commented: *“It was inconceivable to me... That you would have a competition over a vehicle inspection. One done on an open yard that is not even roofed so its weather depends on how good a topside inspection you get. Then having a competition between two fitters.... It just beggars belief. If there is no intent to defraud with the blue and white sheets, it is just a ridiculous situation to have them for that reason.”*

116. I advised Anthony Hazell that I considered it staggering that he would conceive of a competition over safety inspections in two places as being even vaguely safe. At this, Michael Hazell interjected to say *“I would like to suppress the competition element. I don't think it was a case of their competing with each other.”* However I pointed out that his father thought so.

117. Michael Hazell continued to suggest that his father was not describing a competition. *“It's not competition but perhaps it's a little bit of gentle pressure and it helps people work harder and do the job more effectively.”* For the avoidance of doubt the comments in quotation marks are extracts from the transcript of proceedings.

118. Comment was made by Michael Hazell that he was surprised that the current public inquiry had no mention of any wheel loss; prohibitions for bald tyres; S marked prohibitions at MOT's; or complaints about prosecutions for vehicles being used without tax, MOT or insurance. He referred to the DVSA report complaining about inspection forms, first aid kits, fire extinguishers and a couple of references to MOTs.

119. It was suggested to me that C M Coaches Ltd were not serially non compliant. On the comments about Michael and Anthony Hazell in the upper tribunal decision, I was told that they related to an incident five or six years beforehand. He still felt that he was very harshly treated, he appealed unsuccessfully. I pointed out that not only did the Upper Tribunal not think that he was harshly treated, it spelt out that it was a very bad case.

120. Anthony Hazell told me that he felt that it was difficult to get young people interested in the passenger transport industry, it was young people such as Michael that was needed. He went on to tell me *“like everybody he's made a few mistakes. He's got into the habit of falling out with the DVSA basically because he's had the*

courage to put his head above the parapet and challenge them on certain occasions. Sometimes he may have been right. Sometimes not so right, but you did say earlier on that you encouraged operators to challenge DVSA PG9 decisions”

121. I pointed out that there was a huge difference in an operator being able to challenge a prohibition, I was unequivocally supportive of this, pointing out that this had earlier been discussed in relation to Mr Poole. However that was very different to alleging that an individual lacked integrity and was unprofessional. One can make such an allegation but before doing so there was a need for evidence I pointed out that allegations in respect of public officials can affect their personal life.

122. Michael Hazell reminded me that allegations had been made about a vehicle that he believed he did not own where there had been confusion with a registration plate and an MOT. At that point in time he thought that a DVSA examiner was making something up to add to a report, this was one of the reasons why he was so insistent about receiving all raw data so that he could get to the bottom of it.

123. He then conceded *“now that’s being cleared up I can step back from making an allegation of integrity... But it would have been preferable to be able to find that out before.”*

124. The transcript will confirm substantial evidence from Michael Hazell in relation to statistics relating to MOT passes and vehicle safety, he claimed C M Coaches Ltd had a good MOT pass rate, referring to OCRS throughout the period when he was director.

125. Mr Trott reminded me that OCRS was a targeting tool for the DVSA, indicating risk. As PSV vehicles are not specified the data can be flawed. He went on to suggest that if an OCRS score was captured at any one time it would provide a rough indication, he would have needed to have made a note of the OCRS score when he came in 2014 and recorded it.

126. It was pointed out that OCRS scores were gleaned from MOT pass rates if they were known, and additionally from roadside vehicle encounters. There were no roadside encounters for this operator and so the issue had little or no probative value. It was accepted that the fleet inspection for this vehicle resulted in advisories rather than prohibitions.

127. It was pointed out to Michael Hazell that VE Hassett’s statement referred to a range of inconsistencies about missing mileage, dates, certificates of roadworthiness being signed and so on.

128. On being asked why he accepted a maintenance regime with two different coloured sheets with different dates and very different information, I was told that it was a joint effort with his father. *“I was used to using the white sheets when I had a workshop and I thought it might be an idea that we keep the white sheet but have the official sheet as the blue tachograph one.”*

129. I pointed out that sometimes they were on separate dates, Michael Hazell conceded that occasionally this might have been the case.

130. I also pointed out that although Michael Hazell suggested that the OCRS score for C M Coaches Ltd was a positive feature, the evidence was that in this case OCRS was virtually meaningless and irrelevant.

131. During closing submissions I was reminded by Michael Hazell that he also ran a business called Coach Hire Services, an entity with a single disc where he said there had not been any maintenance issues. A PMI sheet had been produced from the vehicle on that licence and shown to Mr Trott, he was asked to comment on it. Mr Trott told me that as it was a single sheet it did not provide a substantial picture of the operation, it did not provide service intervals and did not reveal whether there were repeated defects or monitoring to check this. It was purely a snapshot.

Material considerations and findings of fact

Assessment of witnesses and comments on individuals

Christopher Hilditch

132. Christopher Hilditch came across as a credible and truthful witness. I do not make any adverse finding in respect of Christopher Hilditch and thank him for attending and giving evidence.

Colin Holt

133. Colin Holt came across as a credible and truthful witness. I do not make any adverse finding in respect of Colin Holt and thank him for attending and giving evidence. He retains his good repute as a transport manager.

Alastair Gray

134. Alastair Gray came across as a credible and truthful witness. I do not make any adverse finding in respect of Alastair Gray and thank him for attending and giving evidence. He retains his good repute as a transport manager.

135. I do not have an issue with Alastair Gray being a director of Greenslades Tours (Exeter) Ltd making an application for a PSV licence. Due to the history of C M Coaches Ltd, I very much prefer that any licence involving him be this new entity without associations with the Hazell family

Andrew Poole

136. Andrew Poole failed to attend the hearing before me despite having had notice that his repute as a transport manager was an issue. Explanation as to why he did not attend was given by others. I have described his failings earlier at paragraphs 43 to 47 and in view of his unwillingness to attend before me and respond I take away his repute as a transport manager.

137. Having taken away Andrew Poole's repute as a transport manager, I must disqualify him until an act has happened or until a specified period of time has passed. I have disqualified him indefinitely on the basis that he should attend before a TC before being accepted on any new licence, additionally he would need an assessment as to his skills and knowledge. From the evidence referred earlier it is most likely that he would need to re-qualify by fresh examinations. I note that the evidence provided was that he has left the industry.

John Burch

138. John Burch is a respected regional CPT manager who gave credible truthful evidence which was of very real assistance. I am grateful to him for attending.

Carolyn Alderton

139. Carolyn Alderton was not asked to give evidence and did not attend. I record that although I make substantial adverse comment and findings in respect of both her brother and her father, no evidence has been given as to how she controls her current PSV business. I also record my acknowledgement that just because a family member has a poor record, this does not necessarily apply to other members of the same family. Whilst I make no criticism of Carolyn Alderton, I bring this case to her attention so that she is on notice that it is both likely and proportionate that the DVSA conduct an investigation to obtain an objective assessment of her operations. I do not know if Carolyn Alderton utilises the skills and knowledge of her father and or her brother, if she does then I urge her to read this decision and reflect.

VE Hassett

140. I found VE Hassett to be an entirely truthful professional and honest examiner and I accept what he has said. I note that VE Hassett has accepted some issues that were disputed by Michael Hazell, this reflects his honest objective character, this includes ownership and operation of a vehicle that Michael Hazell says he did not operate.

141. It was entirely reasonable for VE Hassett to believe that the dual records for C M Coaches Ltd were evidence of false records. It happens that I do not believe there was a deliberate falsification, instead the dual records reflect the culture of systemic incompetence and disregard for basic principles of road safety by C M Coaches Ltd.

142. There was no justification for the very personal and hurtful allegations and I empathise with VE Hassett at the strain that this will inevitably have given him.

Vehicle Enforcement Manager Trott

143. Mr Trott is an entirely credible professional and honest witness and I accept his evidence. It was entirely reasonable to suspect falsification of records as a result of the dual records kept by C M Coaches Ltd. It happens that my findings are that rather than deliberate falsification, the evidence describes the grossest of incompetence by Anthony and Michael Hazell.

Anthony Hazell

144. Anthony Hazell is a danger to the PSV industry as he is so grossly incompetent. It is deeply worrying that he is both a director and he is a transport manager for other entities. I am unable to make any order in relation to his position as a transport manager or make any finding under section 28 of the Transport Act 1985 as no notice was served on him that these were considerations. Nevertheless it is clear to me that he should retire from the industry at the first opportunity.

145. I have come across poor transport managers in my years as a traffic commissioner, I struggle to identify anyone worse than Anthony Hazell. He completely missed the fact that having two separate safety inspections at different venues results in a loss of control. The chaotic maintenance system led to partial

inspections days apart, I ponder how could anyone realistically consider it to be satisfactory?

146. Anthony Hazell's insulting and patronising comments to an experienced vehicle enforcement manager illustrates his inability to work effectively in regulatory regime where safety is important. I note that the transcript shows him applauding his son for "*putting his head above the parapet*" and complaining, making that comment soon after it was apparent to anyone with an iota of awareness that the very personal criticisms of a vehicle examiner were wholly unjustified.

147. The description of the competition between mechanics, supposedly to improve safety, is so ill judged that it beggars belief. The fact that in one breath he promotes competition between mechanics and in the next breath claims that that is not what he intended, merely illustrates his unreliability as a witness. He says what suits his purpose at the time.

148. Having watched and listened to Anthony Hazell give evidence it is no surprise that a previous Upper Tribunal hearing led to excoriating comments about him. He appears to have blotted out the previous Upper Tribunal criticisms, setting himself out as a model of compliance, whilst the opposite is the case.

Michael Hazell

149. I accept that Michael Hazell took a vehicle off the road when Mr Trott gave evidence that mistakenly suggested that there were problems with brake testing, that goes to his credit. Another positive feature in the balancing exercise undertaken is that he took off the road for a day a vehicle which the DVSA had reasonably but mistakenly thought was operated by him, was operated by someone else.

150. Michael Hazell is apparently intelligent and articulate, however that has not prevented him making some appalling errors of judgement, it is not clear to me to what extent this is due to what he may have learned from his father.

151. Michael Hazell grasps at straws to deflect criticism, an example being his claim that OCRS scores demonstrate good compliance. If he properly understood (or listened to) DVSA examiners he would have appreciated the limited value of relying on OCRS scores in a PSV operation where there have not been any roadside encounters.

152. Whilst Michael Hazell has demonstrated tenacity, his consistent failure to accept personal responsibility is a concern. Blaming others does not absolve him from his responsibilities as a transport manager in a regime whereby he has allowed for PMIs to be spread across two different sites and without proper facilities.

153. Instead of actively listening to DVSA examiners and taking on board constructive and valid criticisms he has resorted to unjustified personal attacks questioning professionalism and integrity. Although Michael Hazell claimed to know the STC's statutory guidance documents, it is clear that whilst he certainly knows of their existence, he does not understand them (assuming he has read them).

154. I have concerns as to the number of occasions recorded in this decision relating to Michael Hazell complaining about individuals. The way he goes about this

appears to illustrate his lack of any personal responsibility. Unfortunately the instinctive reaction of Michael Hazell appears to be to appeal, complain or make personal attacks if an adverse suggestion is put to him. He is advised to actively listen and to learn.

155. The use of a chaotic dual PMI system with inadequate partial checks on different dates does not amount to a satisfactory maintenance regime. For that reason alone Michael Hazell should both lose his repute as a transport manager and also be disqualified as a director under section 28 of the Transport Act 1985.

156. Aside from the above paragraph, the unjustified and sustained personal attack on the integrity of an experienced examiner has patently caused very real harm. The personal impact on others appeared to be of little or no consequence to Michael Hazell. He merits losing his repute both as a transport manager and being disqualified as a director under section 28 of the Transport Act 1985 as a consequence of his personal attacks. Ironically Michael Hazell referred to a recent case involving a complaint where the Court of Appeal emphasised the need for operator licensing to be based on trust. I do not trust Michael Hazell and his inability to listen and engage with examiners is such that DVSA examiners might need specialist training and counselling before engaging with him.

157. Michael Hazell's behaviours are incompatible with a licensing regime which requires either trust or a proper appreciation of road safety. He fails on both counts and merits disqualification on both grounds.

158. I make some specific findings of fact involving Michael Hazell:

- I prefer the evidence of DVSA examiners to that of Michael Hazell and or Anthony Hazell.
- Referring to paragraphs 71 and 72 of this decision, I prefer the evidence of VE Hassett to that of Michael Hazell.
- Brake testing was defective as described by VE Hassett, I do not accept what Michael Hazell says on this.
- There was a lack of records as described by VE Hassett, this reflects the lack of competence from Michael Hazell.
- Records were inaccurate as described by VE Hassett, this reflects on the lack of competence from Michael Hazell.
- There was a lack of rolling road brake tests or other measured brake tests as described by VE Hassett, this reflects Michael Hazell's lack of competence.
- Referring to paragraphs 55 and 59 there is a lack of acceptance of Mr Hassett's evidence by Michael Hazell. I prefer VE Hassett's evidence and find that Michael Hazell has yet again made unjustified aspersions. I also note that if he were correct, evidence could have been produced by Michael Hazell. That does not match up with his methods which are to blame others for his failures.
- There was a lack of written records produced for a loan vehicle, this despite it being within transport manager Michael Hazell's control. This reflects on his lack of competence.
- Michael Hazell did not properly understand the PG 13 F & G, this goes to his competence as a transport manager.
- Michael Hazell did not ensure records accurately showed maintenance arrangements, this goes to his competence as a transport manager.

- There are some contradictions in the evidence of Mr Burch from the CPT and Michael Hazell, I prefer the evidence of Mr Burch. I accept that Mr Burch told Michael Hazell to ensure that there was an accurate written record of maintenance with the TC. I do not accept what Michael Hazell says on this relating to obtaining advice from the CPT in London, this illustrates his seeking to blame others for his failings.
- Michael Hazell as transport manager and as director allowed the introduction of a woefully inadequate and inherently dangerous maintenance regime whereby there were two half baked inspections, both inadequate and sometimes on different dates.
- Michael Hazell made wholly unjustified and cruel allegation in order to deflect from his own failings.

159. I have sought to identify both positive and negative features in conducting a balancing exercise. Whilst I have identified some positive features they are heavily outweighed by the significant road safety concerns as a result of the maintenance investigation, and additionally unsubstantiated false allegations against DVSA officials.

160. When I ask myself whether I trust this operator, I answer in the negative. I remind myself on this point that the operator is a limited company and the controlling mind at the relevant time was Michael Hazell.

161. I remind myself that operator licensing is based on trust and in 2012/034 Martin Joseph Formby t/a G & G Transport; the Upper Tribunal said *“traffic commissioners must be able to trust those to whom they grant operator’s licences, to operate in compliance with the regulatory regime. The public and other operators must also be able to trust operators to comply with the regulatory regime.”*

162. Judge Brodrick, in the case of 2006/277 Fenlon said:
“It has been said on many occasions that trust is one of the foundation stones of operator licensing. Traffic Commissioners must be able to trust operators to comply with all the relevant laws, rules and regulations because it would be a physical and financial impossibility to police every aspect of the licensing system all day and every day. In addition operators must be able to trust other operators to observe the relevant laws, rules and regulations. If trust between operators breaks down and some operators believe that others are obtaining an unfair commercial advantage by ignoring laws, rules or regulations then standards will inevitably slip and the public will suffer.”

163. I also remind myself of comments from the Upper Tribunal at paragraph 19 of NT/2013/028 Arnold Transport and Sons Limited v DEONI:
“the impact of unfair competition is insidious in that it gradually and subtly undermines the confidence of compliant operators that their competitors will comply with the regulatory regime and thus compete fairly. What matters is the perception that other operators are competing unfairly not whether they are achieving any benefit as a result. Once rumours, of unfair competition spread, (or clear evidence of it become apparent), the assumption will be made that it must be advantageous because there would be no point in running the risks involved if it was not. It is also corrosive because once rumours of unfair competition (at the very least), begin to spread the perception that some operators are competing unfairly (whether or not

they profit by doing so) has a damaging effect. It means that normally compliant operators will feel tempted to “cut corners” in relation to the regulatory regime in order to remain in business. Some may decide to resist that temptation but others are likely to succumb. The end result, if swift and effective steps are not taken to stamp out unfair competition, is that the operators who are most determined to remain compliant will be at greatest risk of being put out of business, even though they are the very operators who most deserve to remain in the industry. Trust, whether between operators and the traffic commissioner or between operators themselves, is all too easily destroyed. Rebuilding it, if that is even possible, is likely to be a long and slow process.”

164. In the case of 2007/459 KDL European Ltd the court said:
“We are satisfied of the need “to make an example of the operator so as to send a warning to the industry as a whole”. This is consistent with the approach by the five-judge Court of Session in the Thomas Muir case (see paragraph 2(xiii) above) where deterrence is expressly mentioned (“in particular for the purpose of deterring the operator or other persons from failing to carry out their responsibilities under the legislation”). This is not by way of punishment per se but, as Lord Cullen said, is “in order to assist in the achievement of the purpose of the legislation”. We answer the question posed in 2002/17 Bryan Haulage (No.2) “is the conduct such that the operator ought to be put out of business” in the affirmative. And we judge this at the date not only of the public inquiry but also of the appeal. This is a bad case and we hope that the message sent out will be clear to all.”

165. When I ask myself the Priority Freight question, I answer in the negative, I answer the Bryan Haulage question in the affirmative. My decision to revoke the licence is an obvious one.

166. The Upper Tribunal referred to the case of T/2017/55 Alistair Walter and the need for consistency of decisions relating to director disqualifications and transport manager repute. This is not a problem for me in this re-hearing as I have no difficulty whatsoever in determining that Michael Hazell must both be disqualified as a director – and additionally – lose his repute as a transport manager.

167. This is a case where it is not merely a matter of the correct application of the law, applying T/2017/55 Alistair Walter, it is in the interests of the travelling public and in the interests of other compliant operators that an order of disqualification be made in respect of Michael Hazell as a director under section 28 of the Transport Act 1985 and an order that he loses his repute as a transport manager. It is not an issue of passing examinations or a period of time having passed, he would need to demonstrate a different character. He would need to be able to actively listen to others without reacting negatively, a feature that does not appear to come naturally to him.

168. Michael Hazell’s unwarranted personal attacks on a public official who is (with respect to the individual) not at a high level of seniority is a feature where right thinking operators would demand that he be kept out of the licensing regime for a substantial period of time. The reason for the section 28 and the transport manager disqualifications being indefinite is that he would need to be a very different character.

169. The justification for Andrew Poole losing his repute as a transport manager and being disqualified indefinitely are set out above. In his case the indefinite

disqualification could be relatively short if he attended and explained, albeit he may also need to pass fresh examinations.

Decisions

170. I make decisions as set out in paragraphs 1 to 10 inclusive.

Other

171. I have not made any formal adjudication in relation to Anthony Hazell's repute, either as a director or as a transport manager. The reason for this is that he was not given any formal notice as required before such an adjudication. He chose to attend the hearing before me to support his son and made comments and interventions that did him no favours. Any application involving Anthony Hazell should be referred to a TC with a note of my findings in this case, together with a reminder of the wording set out in paragraph 3 of the Upper Tribunal decision, referring to him as having previously demonstrated "*a wilful disregard of the need to ensure regulatory compliance.*" I reflect that comments from the Upper Tribunal were amply corroborated in this case.

172. The interests of road safety and fair competition justify my asking the DVSA to investigate any entity where Anthony Hazel has an existing involvement.

173. If the application by Michael Hazell for Exebus Ltd is pursued, then it should not be listed until after the period has passed for any appeal against this decision. This would allow for the Upper Tribunal to make findings on my decisions in this case. I remind myself that Michael Hazell is a serial complainer and regularly holds a grievance against individuals who makes findings that are not favourable to him.

174. Subject to the paperwork and finances having been in place for the necessary period of time, I see no reason why an application by Greenslades Tours (Exeter) Ltd should not be granted as applied, although I respect that this is a matter for a different TC. I have indicated that I would be prepared to postpone the revocation of the C M Coaches Ltd licence to facilitate the continuation of business by Mr Gray, see paragraph 5 of this decision.



Nick Jones
Traffic Commissioner

19 December 2019