



Neutral Citation Number: [2019] UKUT 0254 (AAC)

Appeal Nos. T/2019/32 & T/2019/33

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER
TRAFFIC COMMISSIONER APPEALS**

**IN AN APPEAL FROM THE DECISIONS OF
Kevin Rooney, Traffic Commissioner for
the West of England dated 25 March 2019**

Before:

**Her Hon. Judge J Beech, Judge of the Upper Tribunal
John Robinson, Specialist Member of the Upper Tribunal
Michael Farmer, Specialist Member of the Upper Tribunal**

Appellants:

CM COACHES LIMITED

MICHAEL HAZELL

In attendance: Mr Pojur of Counsel instructed by Stone King solicitors on behalf of CM Coaches Limited with Mr Gray in attendance and Mr Hazell in person

Heard at: Field House, 15-25 Bream's Buildings, London, EC4A 1DZ

Date of hearing: 29 July 2019

Date of decision: 21 August 2019

DECISION OF THE UPPER TRIBUNAL

IT IS HEREBY ORDERED that the appeals be ALLOWED and that the matters be remitted for a further public inquiry before a different Traffic Commissioner

SUBJECT MATTER:- Failure to undertake an adequate analysis of the evidence; inconsistency of findings; absence of balancing exercise; failing to consider the position of CM Coaches Limited as at the date of the public inquiry; lawfulness of purchasing a limited company with an operator's licence without any physical assets

CASES REFERRED TO:- 2009/225 Priority Freight & Paul Williams; 2002/217 Bryan Haulage No.2; Bradley Fold Travel Ltd v Secretary of State for Transport (2010) EWCA Civ 695; T/2010/49 Aspey Trucks Ltd; T/2017/55 Alistair Walter; 2006/227 Fenlon.

REASONS FOR DECISION

1. These are appeals from the decision of the Traffic Commissioner for the West of England (“the TC”) made on 25 March 2019 when he determined that:
 - a) Michael Hazell (“Mr Hazell”) had lost his good repute as a transport manager under Schedule 3 of the Public Passenger Vehicles Act 1981 (“the Act”) and Article 2 of EU Regulation 1071/2009 and disqualified him from acting as such for a period of three years;
 - b) Revoked the operator’s licence of CM Coaches Limited (“CM Coaches”) with effect from 23.59 on 27 April 2019 having found that the company had lost its good repute; that there had been a material change and the company lacked professional competence.
2. We heard the appeals of Mr Hazell and CM Coaches separately but now produce a joint decision in view of the shared background, the connections between the two Appellants and the fact that the appeals arise from the same public inquiry.

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 repute 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.

The period immediately before the public inquiry

17. Immediately prior to the public inquiry, Mr Hazell submitted written representations. His explanation as to how Mr Gray became involved with the operation mirrored that given by Mr Burch. He considered that in purchasing CM Coaches, Mr Gray would have a ready-made business with an established footing which included accounts for most of the major customers in the area including Devon County Council, Exeter University, Babcock Military and First Rail Support. The tendering exercise for some of these contracts could take some time and Mr Gray had the benefit of contracts already awarded, favourable insurance rates, fuel card accounts and all of these factors made the purchase of the company a more attractive proposition than making a new application for a licence. Mr Hazell agreed to sell CM

Coaches to Mr Gray with a part payment being made. The balance was to be paid once all the relevant matters were in place and the finances of the company were settled. But for the public inquiry, the contract would have been concluded. Mr Hazell gave a number of explanations for the apparent maintenance failings. He did not consider that the vehicle fire gave rise to criticism of him. He had written a letter which he had sent to the Central Licensing Office in Leeds on 12 February 2018 (rather than the DVSA) as he thought that was the appropriate address and the Central Licensing Office must have misfiled it. The letter appended to Mr Hazell's response did not include an operator's licence number, an address for the company and was not addressed to the OTC or the DVSA. He gave an explanation (with supporting documentation) for a significant amount of mileage covered by a vehicle which had been VOR'd at the material time. There was no explanation for why the vehicle had been used whilst the VOR declaration was still in place. He asserted that the Bowmonk decelerometer was transported between the operating centre and Carmel at Northlew and the reason for two sets of PMI sheets relating to the same PMI inspection was that Clive Eldridge would do the topside check of the vehicle at the operating centre and the vehicle would then be driven to Northlew for the remainder of the inspection that required facilities and that explained the mileage covered between the two inspections. The absence of Bowmonk brake test printouts was because the blue tooth connection between the machine and the printer was faulty (that did not explain why the fitters did not enter the figures manually onto the inspection sheets). As for excessive gaps between PMI inspections, Mr Hazell accepted responsibility and produced either MOT certificates or evidence that vehicles had been MOT'd during those gaps but asserted that each vehicle had undergone a pre-MOT PMI inspection. With the benefit of hindsight, he should have kept those inspections records. We note that all of the relevant dates referred to, pre-dated his nomination as a transport manager and it is therefore assumed that Mr Hazell accepted that responsibility as a director.

18. Mr Hazell asserted that all drivers were trained in daily walk round checks and that audits of those checks were undertaken. By way of example, he attached to his representations, one document entitled "Driver Induction to Daily First Use Checks" dated 9 May 2018, the driver concerned being Clive Eldridge (the fitter). He also attached a "First Use Check Inspection Audit" for the week commencing 14 May 2018 which recorded four checks on vehicles undertaken by Clive Eldridge. These documents were not considered by the TC during the public inquiry.
19. On 28 February 2019, Mr Gray submitted a witness statement for the TC's consideration. He advised that he remained the sole director of CM Coaches and the nominated transport manager. He noted the TC's concerns that he had not been listed on the licence as a director, however he believed that the change had been made on the VOL system on 29 December 2018. Mr Gray set out his history within the road transport industry. He had established Hamilton Grays with Sarah Hamilton in about 2011 and had been a director for a short period but was the transport manager throughout the life of the licence before it was revoked. He had a 25% shareholding.

20. Hamilton Grays had been called to public inquiries in March and July 2018 because of concerns about financial standing. The company had lost a very significant contract with Megabus in 2016 which had generated revenue of £37,000 per week and had required the dedicated use of five vehicles from the fleet along with nineteen drivers. It was difficult for the company to recover from the loss of that contract.
21. The company went into administration on 6 November 2018. He produced the Statement of Affairs showing an estimated total deficiency of £665,672 (with £460,552 owing to HMRC). However, debts were continuing to be cleared and creditors (including First Transport Solutions) were paying into the administration fund. It was anticipated that with the agreed payment plan and the personal guarantees made, that the whole debt would be paid. The financial standing of CM Coaches would not be affected by the guarantees given.
22. During the life of the Hamilton Grays licence there had not been any concerns about maintenance or other regulatory requirements and the company had been given an opportunity to apply for a new licence at the July 2018 public inquiry, providing financial standing could be met. Mr Gray's initial reaction was to leave the industry but he changed his mind and he incorporated Hamilton Grays (South West) Limited on 3 October 2018 (he being the sole director) with the intention of making a new application for a licence. That company then became Greenslades Tours (Exeter) Limited and the existing maintenance workshop was separated from that business and became Budlake Commercials Limited.
23. Mr Gray confirmed the chronology as set out in the letter of Mr Burch. He checked the OCRS score for CM Coaches (green traffic and amber roadworthiness) and ascertained that there were no conditions on the licence and that the shareholders were prepared to sell their shareholding. He was not aware that Mr Hazell had resigned as transport manager and director and when he did find out, he had to work quickly. Mr Gray met with Mr Burch and Mr Hazell on 29 December 2018 and he was nominated as transport manager. He thought that he had also been added as a director to the licence. A maintenance agreement was drafted, Budlake Commercials was added as an operating centre and the vehicle authorisation was updated. He was unaware that Mr Holt's log-in details were being used to access the VOL system and had since applied for his own log-in details. Arrangements were then made to transfer the shares although that had not taken place. Mr Gray assured the TC that the Hazells would not have any involvement in the company and an undertaking was offered in that regard. The operating Centres at Unit 65 Marsh Green Road and BVS Commercials which remained on the licence would be removed. The new operating centre had parking spaces for eleven vehicles although Mr Gray intended to operate eight vehicles. At the time of the hearing, two were in possession.
24. Mr Gray set out the systems that would be in place including PMI intervals of four weeks, brake tests at every PMI using a calibrated Tapley meter, roller

brake testing every three months and a transparent VOR system. He had undertaken a CPC refresher course in the previous five years; he would have two administrative assistants; a drivers' handbook was produced (although not included in the appeal bundle).

25. Mr Gray requested that the TC accept his proposals. Whilst he had been associated with Hamilton Grays, he retained his good repute and *"the door was left open"* for him to make a new application.

The public inquiry

26. In attendance at the hearing was VE Hassett and Senior Vehicle Examiner ("SVE") Trott; Mr Hazell, who was represented by Mr Woodcraft of Keystone Law; Mr Gray, who was represented by Mr Banks of Lyon King solicitors; Mr Holt, who was accompanied by Mr Hilditch and Mr Poole, who was unrepresented.
27. At the outset of the hearing, the TC indicated that he did not consider that the history of CM Coaches and in particular the maintenance issues, were of relevance to the issues raised by Mr Gray wishing to buy CM Coaches, his nomination as transport manager and his directorship.
28. VE Hassett was then cross examined by Mr Woodcraft and Mr Hazell's various explanations for some of his findings were put to him. He was asked whether Mr Hazell's explanation for the large amount of missing mileage whilst a vehicle was VOR'd addressed VE Hassett's concerns. He responded *"Possibly. Without going back and looking at all my notes and my analysis of the maintenance documents themselves it's difficult to comment whether that's acceptable or not. Because I can't recall what the defect note was, what the defect on the defect note was for .."*. He was not satisfied with Mr Hazell's explanations for long gaps between PMI inspections as MOT tests were not a substitute for a full PMI. He dismissed Mr Hazell's explanation for the replacement of track rod ends on a vehicle prior to MOT which were not noted as defective (the explanation being that MOT examiners like to see new parts during an MOT examination). Mr Hazell's explanation for the two sets of PMI sheets was not acceptable.
29. One particular area of dispute was VE Hassett's findings in relation to the company's MOT pass rate and the overall failure rate of 44%. Using the OCRS score, Mr Hazell had calculated much more positive figures for the period when he was transport manager. VE Hassett was asked whether Mr Hazell's explanation *"held water"*. VE Hassett's response was *"Not unless ... somewhere in my notes I may have an analysis of the five year and the two year but my concern was the overall fail rate was 44% (sic)"*. He was asked to go through the fails that he had recorded. He mentioned a fail on 9 February 2018 for service brake operation on vehicle SIG 8434. Mr Hazell immediately denied that the vehicle had ever been operated by CM Coaches. In response, VE Hassett explained that the registration was on the list given to him by the operator. He did not produce the list for the TC or Mr Hazell to consider. It was not further explored with VE Hassett during the hearing

although Mr Hazell in his evidence repeated his denial that the vehicle was associated with CM Coaches.

30. In his evidence to the TC, Mr Hazell repeated his written representations and so that evidence is not repeated here. He gave the date of his appointment as transport manager as 15 March 2018. It was sometime after 12 February 2018 that he was informed that he should have notified the DVSA of the vehicle fire by way of a specific form. He did wonder at the time of sending the letter to the Central Licensing Office whether a connection would be made between the letter and the CM Coaches licence.
31. When he had closed the operating centre down at Unit 3 Grace Road West, he had removed the address as an operating centre from the operator's licence using the VOL system and changed the registered address. It was an oversight that he had not also changed the correspondence address to Unit 65 Marsh Green Road. The reason for the vehicle MOTs being kept at Carmel Coaches premises was because Carmel Coaches owned the vehicles. As for the split PMI regime, Mr Hazell produced a PMI sheet dated 7 March 2018 for vehicle FA07 XEH completed by Clive which had rectification work shown on it. There were 17 defects recorded. He told the TC that this PMI had been undertaken at Northlew with Clive dealing with the topside and Steve, the underside. The TC pointed out that Clive had recorded "*h/brake chambers wound off*" with rectification work recorded as "*wound in*". The TC questioned whether that was something one would find in a topside check. Mr Hazell suggested that part of the topside check could have been done over the pit. VE Hassett commented that for the brake chamber to have been wound off, someone must have been under the vehicle to achieve that in the first place. He queried how the vehicle could then have arrived in Northlew without brakes. Mr Hazell asserted that it looked like there was question mark next to the defect although VE Hassett further queried why anyone would put a question mark next to such a statement. Mr Hazell could not answer but highlighted that the defect had been repaired and signed off. VE Hassett then highlighted another issue with the PMI inspection: there was a question mark against "*air leak audible faint*" and yet it had been driven on the road. As for the replacement of track rod ends which were not defective prior to an MOT in order to satisfy the examiner that work had been carried out on the vehicle, the TC put to Mr Hazell that it was a "*ridiculous explanation*". Mr Hazell's response was "*mmmm*".
32. Mr Hazell confirmed his view that the OCRS score applicable to his time as transport manager was not as bad as VE Hassett had stated and his MOT pass rate of 70% (as he calculated it) was above the national average which he stated was 68.3%, a figure he had obtained from the internet. The OCRS score for his sole trader licence was "green".
33. As for his use of Mr Holt's log in details for the VOL system, Mr Hazell maintained that when he had first used them, the details were automatically saved to his browser and he did not thereafter, notice Mr Holt's name in the top right hand of the screen. In any event, he thought the details were those of CM Coaches.

34. As for the arrangement he had with Mr Gray, Mr Hazell had already transferred two registered services to Carmel Coaches, leaving the remaining contracts. He accepted that in due course, Mr Gray would have to notify the companies that CM Coaches had contracted with to inform them of a material change but Mr Gray had already approached Devon County Council and had received a positive response. There was no reason why the other companies would not react in the same way.
35. He was not using his sole trader operator's licence at the time of the hearing.
36. Mr Holt then gave evidence and the substance of his evidence is set out in paragraph 5 above. As for his VOL log-in details, he had provided those for use when he was on holiday prior to his resignation. He was not aware that they were personal to him and that they were still being used.
37. Mr Poole then gave evidence. He had been asked to become transport manager at the end of 2016 although the records show that he was in place from 9 June 2017. The company had left the operating centre and workshop in February or March 2017 (Companies House records were amended in January 2018) and he then had a discussion with Mr Hazell about maintenance being undertaken off site because the new operating centre did not have any facilities. As far as he was concerned, they used the white PMI sheets. Once the maintenance was moved, the PMIs took place between two sites and Mr Poole was concerned about inspections being started and finished at different sites. His understanding was that this could not take place. However, Mr Hazell had told him that it was fine. He was not aware of the blue PMI sheets being used. Mr Poole resigned as transport manager with effect from 21 March 2018. None of the issues identified by VE Hassett during the period of Mr Poole's tenure as transport manager were put to him by the TC.
38. Finally, Mr Gray gave evidence. He told the TC that he wanted to buy CM Coaches because of the existing contracts as the tendering process could otherwise take a considerable time to complete. There was no reason why those contracts could not continue. He had already discussed the position with Paul Edmunds of Devon County Council and there was no issue. Having paid a small amount as a down payment, he had hoped that the sale could be completed early to mid-January. Now, it was on hold. No vehicles had been operated until two or three weeks before the hearing. There were two vehicles presently specified on the licence.
39. He confirmed that he had not been involved in the financial side of Hamilton Grays and did not know why HMRC was owed two thirds of the debt. He had seen the Babcock Military contract held by CM Coaches but had not spoken to anyone about whether it would continue. He was waiting for the outcome of the public inquiry. Neither had he sought legal advice about how the contracts would "*transfer*". He would need to look into it before the sale was completed. He confirmed that no physical assets were being transferred in the sale. He was buying the company registration, the operator's licence and

the contracts and he did not believe that there would be any difficulty with them (the TC indicated that he would like to see the contracts). The vehicles had been the subject of finance agreements and those had been novated.

40. Whilst the hearing was taking place, SVE Trott considered the maintenance records produced by Mr Hazell at the beginning of the hearing. Vehicle FJ56 KUH was inspected on 12 August 2018 and this was the first record which showed that a Tapley meter had been used for brake testing. Written on the PMI sheet were the words "*calibration expired on brake tester*". On 25 September 2018, a PMI inspection revealed defects with the brakes which were repaired. No roller brake test was undertaken and there were no Tapley meter recordings or any other brake performance indication following repair. Vehicle YN08 ZMP had a brake performance test on 30 May 2018. The next brake test was on 21 February 2019 but there were no PMI or other records associated with that test. There was also a PMI inspection on 21 November 2018. SVE Trott was particularly concerned by a PMI record dated 7 September 2018 for vehicle FA07 XEH which had a declaration written on the back "*bus taken before wheels could be re-torqued 7.9.18 at 13.35*". The next note was three days later on 10 September 2018 which records that the wheels were torqued. It followed that the vehicle had been in operation in the intervening period without the wheels being re-torqued.
41. VE Hassett looked at one vehicle file over the short luncheon adjournment and he noted that two PMI inspections showed no evidence of brake testing. There was a brake test duplicated within half an hour of each other for one vehicle which were both passes which VE Hassett thought was "*rather strange*". There was also a driver defect report for a damaged mirror which was not signed off as rectified.
42. In his closing submissions, Mr Woodcraft asked the TC to find that Mr Hazell had retained his good reputation. There was nothing untoward about the proposed sale of the business. Mr Hazell's failure to retain pre-MOT PMI sheets and his approach to MOTs had been a "*learning curve*"; he had explained one significant amount of missing mileage whilst a vehicle was VOR'd and Mr Hazell appreciated that the paperwork was not as robust as it could have been; the recordings of non-rolling brake tests were more of an issue but roller brake testing had been undertaken; three vehicles had been inspected by VE Hassett and they were clear of defects; the use of two sets of PMI sheets was not a device to mislead although it did cause a degree of concern; the evidence of Mr Hazell concerning his OCRS score compared to the MOT pass rate put forward by VE Hassett required due consideration and that many of the matters pre-dated Mr Hazell's nomination as transport manager. Mr Hazell had put forward evidence of other compliance including his own training record, the defect reporting induction driver's training and gate checks, a forward planner and driving licence checks (of which there was no evidence of in the appeal bundle).
43. On behalf of Mr Gray, Mr Banks submitted that the only issue in his past was the revocation of the Hamilton Grays licence. However, in the TC delaying the date of revocation, Mr Gray had been given an opportunity to return to

operator licensing subject to satisfying the regulatory requirements by the delay in the revocation of the Hamilton Grays licence. Whilst that invitation contained in the decision letter related to a new licence, the decision to buy a going concern instead was based on the advice given by Mr Burch. Mr Gray's good repute could not therefore be tarnished as a result of the approach that he took. He had acted in good faith and taken appropriate advice. The purchase of the business made commercial sense. The arrangements for maintenance and regulatory systems set out by Mr Gray meant that the company could be trusted going forwards and the *Priority Freight* question could be answered in the positive. The TC was urged to allow the licence to continue with undertakings in relation to the absence of future involvement of Mr Hazell and the transfer of the shareholding within a certain period of time. In response to an enquiry, Mr Banks agreed that he could provide the TC with copies of the contracts by the end of the week.

44. On 8 March 2019, Mr Banks emailed the OTC stating that in the time available, the company had only been able to receive clarification by email of the contractual position in relation to Devon County Council and First Travel Solutions Limited. An email from Mr Edmonds, Passenger Services Manager for Devon County Council was attached which confirmed that work would continue to be provided to the company provided that Ms Alderton confirmed that she was selling the company as she was recorded on the council's records as being the Managing Director. Work under the latter contract with First Solutions had already commenced and in the previous two weeks, work to the value of £15,000 had been undertaken demonstrating that it was a contract of significant value. He enclosed two sample invoices for the provision of two buses on 9 February 2019 for the total sum of £900 and an email from Mick Coombes of First Travel Solutions attached to Mr Banks' email, confirmed that CM Coaches would continue to be one of the company's preferred operators and that work would be offered as normal. Private hire work might also be considered. Mr Banks advised that in respect of Babcock Military he had been unable to obtain written confirmation that the contract would continue but he had been "*advised verbally it has been confirmed that the material change will not affect the contractual basis. We have requested email confirmation and whilst I appreciate the cut-off point is today, if that confirmation arrives, I will forward it*". Nothing further was sent to the TC by Mr Banks.

The Traffic Commissioner's decision

45. In his written decision dated 25 March 2019, the TC confirmed that the maintenance issues were irrelevant to Mr Gray or the company "*as it would be constituted*" should the sale be completed. Hamilton Grays had not given cause for concern in relation to maintenance. However, the TC proceeded upon the basis that the purchase of the business had not yet been completed and it was possible that it would not be. He therefore made his determination of the company as it was prior to 29 December 2018 as "*that could well be the way it stays*".

46. Mr Hazell sought to write-off any history that pre-dated his role as transport manager or director. The unchallenged evidence of Mr Poole was that Mr Hazell had influence over the operation earlier than that. The TC relied upon Mr Poole's concerns over the split PMI process which began in February or March 2017 but was assured by Mr Hazell that it was all in order.
47. Mr Poole stated that he had never seen the blue PMI sheets. This was unchallenged. The TC was concerned as was VE Hassett, that the white records were never meant to be provided to the DVSA whilst the blue records put forward a much more positive view of the operation. Even in Mr Hazell's own evidence bundle, the white PMI sheet (referred to in paragraph 30 above) painted a worrying picture. It identified three immediate and three delayed PG9's. A broken door glass and the handbrake chambers wound off, absent explanations, appeared to identify significant failures in maintenance. At least six of the defects were driver-reportable. The identification of the handbrake chamber wound off and worn chamber threads were not consistent with the explanation that the white PMI sheets were topside only, although the parking brake was presumably obvious from the vehicle not staying where it was put. Eight of the items were left unrectified but they were not recorded on the blue PMI sheet dated two days later. Neither recorded tyre depths. The records painted "*an appalling picture*".
48. The system of split inspections with the vehicle travelling 30 miles during the inspection is not one that is contemplated by the Guide to Roadworthiness. Whilst the TC was asked to accept that the split inspections could be aggregated, that was not possible. FA07 XEH was signed off as roadworthy by Tony Hazell on 9 March 2018 when 8 defects identified on 7 March 2018 had not been rectified. The whole approach was nonsense and demonstrated a reckless approach by the operator and Mr Hazell as transport manager.
49. The TC accepted that the driver defect reporting was inadequate by reason of the nature of the defects identified on just one vehicle (FA07 XEH). Mr Hazell had suggested in evidence that the defects found on that vehicle must all have happened after the driver had conducted his walk round check. The TC concluded that if that was the case, the vehicle must have spent the 6 March 2018 "*in a war zone*". His submission was "*nonsense*".
50. An instrumented check of brake performance was required at every PMI and roller brake tests at least quarterly. These standards were a very long way from being met, even when taking into account tests using two devices which had expired calibrations. Mr Hazell's excuse about a faulty printer was "*appalling*" and did not explain why manual records were not made.
51. It was also of great concern that the operator chose not to keep pre-MOT inspection records. There was no sensible reason to discard the documents.
52. The TC doubted Mr Hazell's account that he had reported the vehicle fire to the Central Licensing Office in Leeds having spent five years in the office and being familiar with the way in which post was dealt with. However, even if the letter had been lost in the post, that did not explain why it was sent to Leeds in

the first place. Mr Hazell had had enough interaction with the OTC to understand that it was separate to the DVSA. An online search produced the PSV112 form and the local DVSA office was a *“literal stone’s throw from the operating centre”*.

53. Mr Hazell’s response to VE Hassett’s findings was to seek to apportion blame on others and to attack the integrity of VE Hassett himself. That complaint was a matter for the enforcement agency. In making his protestations, Mr Hazell claimed that his MOT performance was better than the national average when under his directorship. By his own figures, the company’s MOT rate was 70% when the overall PSV national test pass rate in 2016/17 was 86% on initial presentation and 91.2% after failures that could be rectified at the testing location were removed. The operator’s performance fell *“woefully below”* those figures, even when using his own figures.
54. All of the above pointed to a complete lack of management control by the operator and transport manager and that was without going back to the earlier performance prior to the summer of 2017. Mr Hazell’s response to having this pointed out to him was to seek to blame other .. *“My response is to find that his good reputation as a transport manager is lost”*.
55. As for *“the transactions”* carried out on 29 December 2018 using the log-in details of Colin Holt, the account holder’s name was clearly visible on the VOL screen and would have been apparent to all those present. In his letter, Mr Burch stated *“we had no choice but to use the account ..”*. To continue as they did was *“utterly deceitful”*. Further, Mr Gray had told the TC that he knew that Mr Hazell had resigned as director *“several days”* after 10 December 2018 so both he and Mr Hazell knew that Mr Hazell was not entitled to sign the TM1 form nominating Mr Gray on 29 December 2018. They colluded in making a false statement which affirmed the TC’s finding that Mr Hazell’s reputation as transport manager was forfeit.
56. Turning to the transfer of ownership of the business, Mr Gray had referred to the purchase of a *“going concern”* although the registered services had been cancelled and there was no transfer of the operating centre, staff or vehicles. The only *“asset”* bar the operator’s licence was the goodwill and *“specifically”* two contracts with Babcock and First Rail Support. Mr Gray did not know whether there were clauses in those contracts that required material change to be notified despite his assertion that he had undertaken due diligence. The TC referred to having allowed seven days for the contracts to be provided (although the transcript records *“the end of the week”* and Mr Banks referred to the cut-off date being 8 March 2019, so four days). The TC recorded that no contracts had been provided to him but referred to the emails summarised in paragraph 44. He dismissed the email from Mr Coombes of First Travel Solutions as it was unclear whether he was aware of the extent of the *“buy out”*. In any event, the TC did not expect there to be a problem with Mr Gray obtaining work from First Rail Support as Hamilton Grays had undertaken rail replacement work and it was clear that Mr Coombes and Mr Gray knew each other as Mr Coombes’ email opens with *“Hi Alistair”*. Similar was true with Devon County Council. The TC was concerned that Mr Gray was 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*”.

57. The TC found that the value in buying the business did not lie with the contracts but lay in its operator’s licence. By buying the company and the licence, Mr Gray had side-stepped the scrutiny that applies to new applicants. He referred to T/2010/49 Aspey Trucks Ltd which makes a distinction between a finding of loss of reputation of an existing operator and a finding that someone should be permitted to join the industry. By proceeding as he had, Mr Gray had hoped that the TC would apply the test of whether or not to put someone out of business rather than whether or not they should be given the TC’s official seal of approval. That was not right. Neither was it right that the changes in the company should proceed without publication in Notices and Proceedings which gives the opportunity to others to make representations.
58. Because of the gross failings in maintenance and the “*entirely inappropriate sale of the licence*” the TC found that CM Coaches had lost its good reputation. In normal circumstances, the TC would have found that Mr Gray and Mr Hazell had lost their good reputation as operators. However, the role played by Mr Burch was “*troublesome*”. He had a part to play in bringing the parties together and provided advice. He was present when the on-line changes were made. An operator might expect to be able to rely on advice from its trade association. The TC therefore drew back from taking away their good reputation.
59. As for Mr Holt, the primary concern was that he shared his log-in credentials for which the TC warned him and all VOL account holders that the account is personal to them. Otherwise “*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*”. As for Mr Poole, the issues with him were “*rather dated*” and he had been given an assurance that the split inspection process was acceptable. He needed to show more resolve and make his own enquiries but on balance, no adverse finding in relation to his good reputation was appropriate.

The Appeals

Mr Hazell

60. In the days leading up to Mr Hazell’s appeal, he made a number of email applications to adjourn the appeal hearing so that he could continue with his attempts to obtain VE Hassett’s working documents from the DVSA. He was also concerned that a letter from the TC to an officer of the CPT, referring to CM Coaches (the existence of which, the TC had apparently acknowledged), had not been disclosed to him. Despite requests for a fully reasoned application for an adjournment with supporting documents, Mr Hazell failed to provide the same and as a result, he was advised that his application would be considered as a preliminary issue at the beginning of the appeal hearing.

61. On 29 July 2019, Mr Hazell made an application to Mrs Justice Farbey, the President of the Upper Tribunal (Administrative Appeals Chamber), to recuse the writer of this decision from hearing the appeal. The application was refused with an indication that it could be renewed as a preliminary issue at the beginning of the appeal hearing.
62. At the outset of the appeal hearing, Mr Hazell abandoned his recusal application but renewed his application for an adjournment which was refused, the Tribunal being satisfied that insofar as there were question marks over the substance of the evidence of VE Hassett which were not clarified or made the subject of further inquiry by the TC during the public inquiry hearing, then that is a criticism that Mr Hazell could make of the TC in his appeal rather than require an adjournment for evidence to be produced. Whilst Mr Hazell had failed to provide any documentation which might have assisted the Tribunal to consider whether an adjournment was required for disclosure to be made of the letter referred to in paragraph 60 above, we determined that as Mr Hazell's case should in any event be remitted for a further hearing for the reasons set out below, an adjournment was not required. We refused to substitute our own decision for that of the TC.
63. The grounds of appeal which Mr Hazell pursued before the Tribunal can be summarised as follows:
 - a) The TC failed to undertake any proper and separate analysis of Mr Hazell's conduct as an operator and his conduct as a transport manager. The OTC did not add Mr Hazell to the licence as transport manager until 25 April 2018 and therefore he did not have any authority to act as such until that point. The maintenance investigation commenced on 13 June 2018 which was only 49 days after his name was added to the licence. Whilst he had been a director since July 2017, there was a distinct difference between the two roles with the latter being solely concerned with the control and direction of the business. Any issues relating to a transport manager's reputation prior to 25 April 2018 should not be attributed to Mr Hazell. He highlighted a number of instances which pre-dated 25 April 2018 which the TC had improperly attributed to him as transport manager (for example, the notification of the vehicle fire which had occurred on 6 February 2018). Mr Hazell also pointed to the TC's determination that Mr Hazell's conduct in signing the TM1 form nominating Mr Gray as director in his purported capacity as a director (when he had resigned 19 days earlier) went to his reputation as transport manager when it was clear that his findings in this regard related to Mr Hazell's reputation as an operator;
 - b) The TC failed to conduct a full and fair balancing exercise. He failed to consider that Mr Hazell's tenure as transport manager for CM Coaches was relatively short and if the TC had looked at that in isolation, Mr Hazell's OCRS score was Green/Green. He had failed to consider that Mr Hazell had held a single vehicle operator's licence for three years without any maintenance issues having been raised. He had further reduced the licence authorisation of CM Coaches from 15 to 12 when his own external

commitments were increasing. The TC's determination that any failings which could have been attributed to Messrs Holt and Poole were "*somewhat dated*" meant that the action taken in respect of Mr Hazell was based on failings which were "dated" resulting in the action taken against him being disproportionate. Had the TC attempted to make more sense of the data, rather than finding that the split PMI inspections amounted to a serious failing in the maintenance systems, the TC should have determined that quite the opposite was true;

- c) Mr Hazell believed that VE Hassett's data was flawed and therefore his report was unreliable. He highlighted the evidence of VE Hassett concerning the vehicle SIG 8434 which the company had not operated. This had potentially skewed the statistics that the TC had before him. Mr Hazell asked the question: which other elements of VE Hassett's evidence were unreliable? He submitted that the TC should have made further enquiry.

Discussion

- 64. We do not agree with Mr Hazell's attempt to limit the period of time that the TC was permitted to scrutinise his conduct as transport manager. His nomination was signed on 26 February 2018 and Mr Poole resigned with effect from 21 March 2018. If Mr Hazell did not start to discharge the functions of transport manager until 25 April 2018, the issue then arises as to who was discharging those functions between 21 March and 25 April 2018? The Tribunal enquired of Mr Hazell as to whether it was him or whether the licence did not have either a transport manager or a period of grace. Mr Hazell opted for the licence not having a transport manager in the period, which if correct, is something that should be taken into account when considering Mr Hazell's reputation as a director (and the sole director at the time). Further, Mr Hazell remained transport manager until 10 December 2018 and it was clear from the evidence of VE Hassett and SVE Trott that there were continuing concerns raised by the PMI sheets produced at the public inquiry and that there were questions to be answered by Mr Hazell for the period up to his resignation. In the circumstances, we reject Mr Hazell's submission that the TC should only have considered his role as transport manager between 25 April 2018 and 13 June 2018.
- 65. We do however agree with Mr Hazell that the TC's analysis of the evidence before him was flawed and in some respects his conclusions were wrong and/or inconsistent for the following reasons:
 - a) The TC found that the maintenance issues which were identified in the period when Mr Poole was the transport manager were "*rather dated*". However, these appear to have been taken into account when considering Mr Hazell as transport manager. Mr Hazell is correct to raise this issue as VE Hassett's investigation included analysis of PMI sheets that were created as far back as March 2017 when Mr Poole was the transport manager. It is unclear therefore, why the TC concluded that the very real concerns raised in 2017 were written off as being rather dated when

considering the good reputation of Mr Poole. It may be that the TC was satisfied that Mr Hazell was in fact in control of the maintenance regime as the director at the time but if that was his conclusion, then he should have said so. Whilst Mr Hazell considers that Mr Holt should also be “*in the frame*” for some of the maintenance failings identified by VE Hassett, none of them date back beyond March 2017 and Mr Holt resigned as transport manager in December 2016. Of course, Mr Hazell was the sole director during the period covered by the investigation and consideration should have been given to his conduct in that role during the relevant period;

- b) An example of the failure to analyse the historical position concerns vehicle FA07SEH and the split PMI on 7 and 9 March 2018 when Mr Poole was transport manager and Mr Hazell was nominated to take his place. It appears that the TC accepted Mr Poole’s evidence that the regime was instituted by Mr Hazell and that Mr Poole had been assured by him that such a regime was acceptable. Does this conduct of Mr Hazell go to his good reputation as an operator/director or as a transport manager or both?
- c) In coming to his determination that Mr Hazell had lost his good reputation as a transport manager but had retained his reputation as a director, the TC failed to undertake any proper analysis of Mr Hazell’s conduct in either role and failed to consider the position during the period when he was both director and transport manager. Mr Hazell and the Tribunal have had difficulty in determining why the TC felt able to find that Mr Hazell had lost his good reputation as a transport manager but not as a director. Clearly, some detailed analysis was required to justify such a finding and Mr Hazell has been put on notice that a fresh analysis might lead to him losing his good reputation as a director as well. He submits that it should lead to him retaining his good reputation as both transport manager and director. That will be a matter for determination by a different traffic commissioner. This issue has previously been before the Tribunal in the case *T/2017/55 Alistair Walter* which concerned a determination by a Deputy Traffic Commissioner that an owner operator and transport manager had lost his good reputation as a transport manager but had retained it as an owner operator. In that case, the Tribunal determined:

“It is clear from the DTC’s decision, that she felt able to compartmentalise the issue of good reputation as an operator and the issue of good reputation as a transport manager in Mr Walter’s case. It is questionable whether such an approach is feasible or appropriate when considering an individual in Mr Walter’s situation and if it is feasible or appropriate, the DTC did not set out the reasons for such a proposition in her judgment”.

It is of note that at paragraph 59 of this present case, the TC determined that there had been a complete lack of management control “*by the operator and transport manager*”. The operator for all intents and purposes was Mr Hazell;

- d) Prior to the public inquiry, Mr Hazell made his position clear that he considered that VE Hassett’s investigation had produced an incorrect

outcome and that VE Hassett must have taken into account inaccurate information to come to the conclusions that he did, for example, on the MOT first time fail rate. VE Hassett appeared to have attended the public inquiry without the notes and documentation that he had used to prepare his report. He was therefore unable to look back at that documentation to confirm aspects of his report. Examples are set out in paragraphs 28 and 29 above and with regard to the second example and vehicle SIG 8424, VE Hassett did not produce the list that he maintained had been provided to him by a member of staff of the company and which recorded the vehicle as one having been operated under the licence. Neither did the TC ask him to produce it. The importance of this point is two-fold:

- (i) If the challenges to VE Hassett's evidence had been the subject of further enquiry by the TC with determinations on the issues raised by Mr Hazell, then Mr Hazell would not be left with a sense that his challenges had been ignored. It may well be that the TC had concluded that even putting on one side the challenged evidence, this was a bad case of regulatory non-compliance and that the challenges made little difference to the overall position. But if that was the case, then the TC should have said so. Instead, matters were left hanging in the air;
- (ii) In documenting his challenges, Mr Hazell, in no certain terms, attacked the integrity, honesty and competence of VE Hassett. Rather than addressing this issue "*full on*", the TC failed to make any determinations on those challenges and simply stated that Mr Hazell's "*complaints*" were a matter for the DVSA. This is a surprising approach to this issue and is inconsistent with the approach of other traffic commissioners who consider that such attacks, if unfounded, raise an issue of trust which is a cornerstone of the operator licensing system. If a director or transport manager makes such allegations against a DVSA officer which are found by a traffic commissioner to be baseless and/or scurrilous then good reputation is very much in issue as is the issue of trust. Traffic Commissioners often quote the Tribunal case 2006/227 Fenlon in this regard.

We are satisfied that the issues raised by Mr Hazell should have been the subject of determination;

- e) The TC found that the use of Colin Holt's log-in details by Mr Hazell was "*utterly deceitful*". Mr Hazell had given an explanation that having used log-in details once, they were then stored and did not require any further in-putting when Mr Hazell wished to log on to the VOL system. The TC did not question Mr Hazell's explanation and in the circumstances, it is unfair to determine that the use of such was "*utterly deceitful*" without putting that allegation fairly and squarely to Mr Hazell.
- f) Finally, the TC failed to make any reference to having undertaken a balancing exercise when determining the good reputation of Mr Hazell as a transport manager. He simply stated that his response to Mr Hazell's attempts to blame others for his failings as a transport manager, was to find that Hazell's good reputation was lost. The TC may have concluded,

particularly against Mr Hazell's background of the serious regulatory failings (summarised in paragraph 2 above) that there was very little to be weighed into the balance of a positive nature but he was nevertheless required to identify any positive features which could be balanced against the negative, for example, Mr Hazell's regulatory compliance as a sole trader operating one vehicle and his decision to reduce the authority on the licence once he had determined that his future lay in an alternative career to vehicle operation.

66. For all of the reasons set out above, this appeal must succeed and the matter remitted for a further public inquiry before a different traffic commissioner.

CM Coaches Limited

67. We do not need to summarise Mr Pojur's submissions made on behalf of the company as they are set out in the reasons we give below for allowing this appeal:

- a) It is well established that a traffic commissioner must determine the case against either an individual or a company as at the date of the public inquiry. In determining that he could and should consider the position of the company as at 29 December 2018, the TC fell into error. He should have considered the position as at 4 March 2019 although it may be that very little had changed between the two dates;
- b) We do not consider that there is anything wrong in principle in a company with an operator's licence being purchased without physical assets. There is value in a business registration and in the name of a company which, in the normal course of events, will have goodwill attached to it. In this instance, there was a likelihood of two significant contracts transferring with the sale and indeed, work had been carried out for First Rail immediately prior to the public inquiry hearing, thus demonstrating that one contract at least was continuing. This does not mean that the acquisition of the company should not be the subject of close scrutiny, particularly if there is any suspicion of "fronting" but the TC's approach was plainly wrong;
- c) Mr Gray was being advised and was assisted by Mr Burch, an officer of a reputable trade association. It cannot be suggested (without hearing from Mr Burch) that there was anything underhand in the acquisition of the company by Mr Gray. It clearly was not a "*front*" and he had been encouraged to apply for another licence. Whilst it might have been prudent to write to the TC to inform him of Mr Gray's intentions, that advice was not given and we are not satisfied that this failing can be detrimental to Mr Gray's position in view of the assistance he was receiving from Mr Burch;
- d) Without hearing from Mr Burch, no inferences could or should have been drawn about the manner in which it was proposed that Mr Gray acquire the company. Indeed, it was Mr Burch who undertook all of the relevant

changes on the VOL system on 29 December 2018 on behalf of Mr Gray and Mr Hazell. There is of course the issue about the use of Mr Holt's log-in details in order to effect the changes, but we are far from satisfied that the use of the details of a director who had resigned in December 2016 by Mr Hazell, should have resulted in a finding that Mr Gray and Mr Burch had been "*utterly deceitful*" in the use of the details. It may reflect badly on Mr Hazell but without some questioning by the TC of Mr Gray and Mr Burch upon the issue, the TC should have stepped back from the finding that he made;

- e) It is unclear why Mr Burch did not add Mr Gray onto the licence as a director when he was up-dating the VOL system. However, Mr Gray was clear that he thought that his directorship was one of the changes made. He was not questioned about that by the TC. If it is contemplated, prior to the next public inquiry that there was something untoward about Mr Gray's directorship not been added to the VOL system, then Mr Burch should be invited to attend the hearing;
- f) There is no question that the nomination of Mr Gray as transport manager was flawed as a result of Mr Hazell signing the form as a director when he was not and that reflects badly on him but the TC did not question Mr Gray about this or about his understanding of when Mr Hazell had ceased to become a director and why it was that he thought that Mr Hazell could nominate him. It follows that the TC's finding that Mr Gray and Mr Hazell had colluded in Mr Gray's nomination cannot stand unless and until Mr Gray has been challenged on this issue;
- g) The TC should not have considered the position of the company as though it was a new application and in doing so, he applied the incorrect test. He should have asked himself the Bryan Haulage and Priority Freight questions. Of course, if he had, the TC may have come to the same conclusion but the correct test should nevertheless have been applied.

Conclusion

68. It follows from our findings above in respect of the TC's decisions, that both appeals are allowed and we are satisfied that both matters should be remitted for further consideration by a different Traffic Commissioner.



Her Honour Judge Beech
21 August 2019