



Neutral Citation Number: [2019] UKUT 0266 (AAC)

Appeal Nos. T/2019/34

**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 31 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:

**DEKKABUS LIMITED
MARK SELF**

In attendance: Mr Pojur of Counsel instructed by Banks Lyon solicitors on behalf of both Appellants

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

Date of hearing: 30 July 2019

Date of decision: 2 September 2019

DECISION OF THE UPPER TRIBUNAL

IT IS HEREBY ORDERED that the appeals be DISMISSED and that the revocation of the licence shall take effect from 23.59 on 14 October 2019

SUBJECT MATTER:- Stable establishment; failure to use the nominated operating centre; good repute.

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

REASONS FOR DECISION

1. These are appeals from the decision of the Traffic Commissioner for the West of England (“the TC”) made on 31 March 2019 when he made the following orders:
 - a) The operator’s licence of Dekkabus Ltd (“the company”) be revoked with effect from 23.59 on 11 May 2019 for lack of stable establishment and professional competence and failure to use the nominated operating centre under ss.17(1)(a) and 17(3)(a) of the Public Passenger Vehicles Act 1981 (“the Act”);
 - b) The good repute of Mark Self (“Mr Self”) was lost as a transport manager and he was disqualified from acting as such until 1 April 2021 with any subsequent application to be a transport manager to be referred to a Traffic Commissioner under schedule 3 of the Act.

The good repute of Shaun Haden as transport manager was also lost and he was disqualified from acting as such until 25 September 2021. There is no appeal in respect of that order. The TC subsequently granted a stay of the decisions set out in a) and b) above after being satisfied of the company’s proposed operating centre at The Oaks Garden Centre, Poole (“The Oaks”).

The Background

2. The background relevant to these appeals can be found in the appeal bundle, the transcript of the hearing and the written decision of the TC and is as follows.
 - a) Mr Haden had been transport manager for Cavendish Liner Ltd which had its licence revoked in July 2017 although no adverse findings were made in respect of Mr Haden;
 - b) Mr Shore had held a licence which was revoked at public inquiry in March 2011 for failure to demonstrate financial standing and because it appeared that the licence was being operated by a partnership between Mr Shore and his wife. The partnership subsequently made an application for a licence which was later withdrawn;
 - c) Mr Self had been a director of Roadliner Passenger Transport Ltd which had its licence revoked in 2009 for failure to demonstrate financial standing. He had also been a director of Roadliner Cars Ltd which had its licence revoked for the same reason. He was then transport manager for Jeakins Ltd for two periods between April 2014 and February 2016. That company did not have an adverse regulatory history;
 - d) Mr Barnley did not have any adverse regulatory history.
3. The operator’s licence was applied for on 24 February 2016. Mr Shore was the sole director and Messrs Haden and Self were the nominated transport managers. At that stage, the company was called National Distress Ltd. The application was for a standard national licence authorising two vehicles and the nominated operating centre was at Stonehouse Industrial Estate,

Wimborne Minster, Dorset. Mr Self failed to declare that he had been involved with two licences which had previously been revoked although he did declare that he had been subject to a bankruptcy restriction order that remained in force until 12 May 2017.

4. The application was granted at a public inquiry in June 2016 with a number of undertakings relating to finance and compliance and the following:
 - a) The ownership and control of the operator is and shall remain that of Trevor Shore alone and he is and shall remain solely responsible for managing the operator's compliance with licence undertakings; and
 - b) Mark Self shall not be involved in the management of the transport activities which shall be undertaken only by Trevor Shore and the nominated transport manager Shaun Haden.

The nomination of Mr Self as transport manager was refused.

5. In October 2016, the company applied to move its operating centre to PLC Commercials Ltd, 18 St George's Avenue, Poole, the company's nominated maintenance contractor. The application was granted. The correct address of PLC Commercials was in fact 14 St George's Avenue.
6. On 10 May 2018, Mr Self was called to a public inquiry to consider his application to be added as a transport manager onto the company's licence. The application was granted but the TC made it clear that any application for Mr Self to control the transport operation beyond the role of transport manager would be subject to further scrutiny. A new licence was issued with those constraints added to the licence. Then on 17 May 2018, two new licence documents were issued. The first removed the prohibition on the involvement of Mr Self in the management of transport operations but the requirement for sole control to be that of Mr Shore remained. The second issued later that day following an apparent change of trading name had the requirement for Mr Shore alone to be in control removed.
7. Following a complaint having been made to the Office of the Traffic Commissioner ("OTC") that one of the company's vehicles (an ex-Hong Kong tri-axle double decker bus with 102 seats) was being parked in a residential street, the OTC wrote to the company on 25 June 2018 requesting an explanation. Mr Self responded on 7 July 2018 stating that a vehicle was parked on Playfields Drive *"one or two separate evenings a week (usually at the weekend) ... purely for the fact that the Driver (me) has an early start or late finish. The only point to that is that I manage an extra hour at home instead of unlocking the depot gates and opening roller shutter doors either early morning or late at night. The vehicle is then moved by me when drivers hours permit me to do so OR another member of staff moves the vehicles .. Dekkabus and myself assure the Traffic Commissioner that any occasional parking on Playfields Drive is kept to an absolute minimum as we have off road parking for the fleet at our depot .."*. On 25 July 2018, the OTC wrote to the company pointing out that the operating centre should be used for parking.

On 20 August 2018, the company added Bournemouth Coach Park as an additional operating centre with apparent authority for the parking of two vehicles.

8. On 1 September 2018, Mr Self, Mr Haden and Mr Barnley were appointed as directors of the company with 25% shareholdings. Applications to add the new directors onto the licence were then made in October 2018 and that resulted in the TC directing that the company should attend a preliminary hearing on 8 January 2019 to consider whether there were grounds for a public inquiry.
9. In November 2018, the TC received a letter informing him that the company did not have permission to use the premises occupied by PLC Commercials as an operating centre and had not been using it as such. The company was written to on 21 December 2018 and an explanation requested. No response was received. A follow up letter was sent and on 4 January 2019 and Mr Shore responded stating: *"I can confirm that while we still have permission to park at 18 St Georges Avenue that we wish to remove this operating centre from the above licence"*. This would have left Bournemouth Coach Park as the nominated operating centre on the licence. However, no formal application was made to remove PLC Commercials from the licence.
10. In the interim, on 6 December 2018, a DVSA maintenance investigation was undertaken with an outcome of *"report to OTC"*. The shortcomings were:
 - a) The company's registered address of Barnley House 51-53 Sterte Avenue West, Poole was just a mail holding office. There was no trace of the company at that address;
 - b) The company was not using the two operating centres recorded on the licence. Rather it was using the coach parking at Poole Stadium which only allowed parking for 24 hour periods;
 - c) The rectification work on one PMI sheet for vehicle KRU224F (the vintage bus operated by the company) had not been signed off;
 - d) The above vehicle had failed one MOT test and passed one since it was added to the licence. An explanation was required;
 - e) Mr Self needed to provide evidence of transport manager CPD training;
 - f) The number plate on vehicle F5HOR was not *"MOT legal"* and confirmation was required that it had been changed.
11. The response to the PG13E&G was signed by all four directors. It addressed all of the issues raised in the maintenance investigation report. In relation to Barnley House being the registered office of the company, it was submitted that at the time that the licence details were changed to add that address to the licence, it was anticipated that the company would be using the offices in early October 2018. However, the refurbishment of the offices had been delayed and the anticipated move-in dates were 29/30 October 2018. The company was now due to take up occupation on 17 January 2019. As a result of a serious road traffic accident involving multiple vehicles on the M6 on 26 October 2018 and involving one of the company's vehicles (Y829 YBV), in which Mr Shore and Mr Self were travelling, both directors suffered serious injuries (photographs of the significantly damaged vehicle were included with

the response). As a result, the need to notify the OTC of the delay in occupying Barnley House had been overlooked.

12. As for the company's operating centres, it used the Queens Road Coach Park in Bournemouth for positioning vehicles and so that staff could use the facilities. The company had not used PLC Commercial as an operating centre for a long time and the maintenance of the vehicles "*had been awarded to Bourne Transport*" at the beginning of 2018 (this change had not been notified to the OTC). The PLC Commercial operating centre was to be removed from the licence and Bourne Transport (also referred to as Bourne Recovery) was to be added along with Barnley House that afternoon and vehicle washing would take place at these sites. Poole Stadium Coach Park was also used occasionally for positioning of crews to be deployed on rail replacement services. Permission had been sought from Poole Council for this. The directors had always felt that any operating centre used by the company was adequate.
13. In relation to the illegal number plate displayed on F5 HOR, once Vehicle Examiner Lowe had, on 6 December 2018, explained that the plate was inadequately spaced, it was changed to one which "*we have been assured will pass any MOT test without question*" (that plate was also subsequently identified as illegal at a PMI on 10 January 2019 by reason of it displaying a DAF logo).
14. A preliminary hearing took place on 8 January 2019. The TC's concerns about the company's control and the existence of a stable establishment persisted along with concerns as to maintenance and financial standing and as a result, the company and the transport managers were called to a public inquiry which took place on 18 February 2019.
15. On 13 February 2019, the company submitted an application to increase its vehicle authorisation from two to four and to add two new operating centres: one for four vehicles at The Oaks; the other was Barnley House. At the same time, the company disclosed a drink driving conviction in respect of Mr Haden dated 25 September 2018. As it was his second such conviction, he had been disqualified from driving for three years and was prohibited from entering any public house, bar or nightclub in England or Wales for twelve months and was ordered to undertake 80 hours of unpaid work.

The public inquiry

16. In attendance at the hearing was Mr Shore, Mr Barnley, Mr Haden and Mr Self and all were represented by Andrew Banks, solicitor of Stone King LLP. The TC was provided with a bundle of documents, including a compliance audit from Ward International Consulting Ltd (which did not find its way into the appeal bundle). Financial standing was considered and the TC indicated that if the licence were to continue, a period of grace would be granted.
17. Mr Shore told the TC that the company had three double decker vehicles, although the vintage vehicle, KRU224F, was off the road awaiting a new

engine at Bourne Recovery. The two remaining vehicles (which were ex-Blackpool Transport vehicles) were used two or three days a week for rail replacement services mainly at weekends. The company had contracts with First Rail Replacement and Go-Ahead. Those two vehicles were being kept at Poole Stadium although they would be moved to the new proposed operating centre at The Oaks the day following the hearing. Vehicles could also be parked at Barnley House in the evenings but Mr Shore did not realise that the premises were being put forward as an additional operating centre. He accepted that it was not suitable as such. He was asked about Mr Self's letter dated 7 July 2018 and his reference to having sufficient parking at the company's "depot". Mr Shore took that to be a reference to Bourne Recovery although it was not nominated as an operating centre at the time (and never had been). He had also made reference to Bourne Recovery being responsible for maintaining the Hong Kong double decker although Bourne Recovery was not the nominated maintenance contractor. The problem was that the vehicle could not get into the garage at PLC Commercial because of its height. Mr Shore accepted that the company had not used its nominated operating centre at PLC Commercial for a long time. He could not assist as to why Bournemouth Coach Park had been specified as an additional operating centre. However, the company had now found a new and suitable operating centre at The Oaks.

18. It had been left to Mr Haden to inform the OTC of his conviction. However, he had not been in a "good place" at the time of his conviction and as a result, Mr Haden had overlooked the requirement to notify. Mr Shore acknowledged the number plate error and the delay in rectifying it. He also accepted that he had not made sure that the deficiencies highlighted by the maintenance investigation had been addressed. He was still recovering from the injuries he suffered in the accident in October 2018 and he had been on strong medication. He was continuing to suffer from post-traumatic stress disorder.
19. Mr Self gave evidence about the illegal number plate first of all. He explained that following VE Lowe's visit, the plate had been changed for a spare that Mr Self had available. The replacement had a DAF logo displayed and that too was found to be illegal at PMI. Mr Self could not say why he had not purchased a plate from one of the many licenced number plate suppliers. The replacement had been purchased on the internet from Jersey and he purchased it in good faith. The TC pointed out that such websites had warnings displayed "*for show use only*" and Mr Self accepted that this was the position with some of the websites selling plates. He would not be drawn into accepting that he knew that the plate was illegal when it was fitted to the vehicle to replace the illegally spaced plate. However, he did know that a licenced supplier would not sell such a plate. Ultimately, Bourne Recovery had purchased a set of plates and fitted them to the vehicle.
20. Mr Self denied that he had deliberately circumvented the TC's prohibition against him having any control of the company by becoming a director and obtaining 25% of the shareholding. There was no prohibition on the licence at the time and he was not a person of significant control. Mr Shore had wanted to step back from managing the business and when Mr Self's nomination as

transport manager had been accepted, there was no reason why he could not become involved in managing the business. He had been open, up front and transparent. He was a man of faith and would swear on the bible if necessary. He had paid all of his creditors following his bankruptcy and had even sold his house. He had no reason to lie to the TC and he was telling him the truth.

21. Mr Self stated that he was responsible for the maintenance of the vehicles. The only roller brake tests that were undertaken were at MOT because Bourne Recovery did not have the facilities although one vehicle had been inspected during the week prior to the hearing and would have a roller brake test in the following six weeks. The vehicles were however, temperature tested. He described DAF brakes as “*amazing*” and the vehicles were road tested by Bourne Recovery. The maintenance arrangements with Bourne had recently changed so that greater time was taken over PMIs and all tests would take place during the inspection. When it was pointed out to Mr Self that operators were required to undertake roller brake testing within the same week as a PMI had taken place, Mr Self stated that he and the other drivers knew the vehicles well and would know if the brakes were compromised. It was he who checked the PMI sheets and so he was shown a PMI sheet which had been undertaken in November 2018 on vehicle L500 BTS. He accepted that the date of the last tachograph check had not been included in the record, neither had the tyre tread depths and an airbag had been replaced but not signed off as rectified. Mr Self accepted that he had missed these items but the PMI was shortly after the road traffic accident and he was still “*poorly*” at that stage.
22. In the joint response to the maintenance investigation, Mr Self had disputed the 50% MOT fail rate that VE Lowe had identified for the vintage vehicle. However, after he had been taken through the test history, he accepted that 50% was the correct figure.
23. As for parking, in October/November 2018, the vehicles were parked at either Bourne Recovery or Poole Stadium and they also used the facility at Bournemouth coach park. Mr Self accepted that the company did not have allocated parking in either coach park. As for Playfields Drive, Mr Self at first denied that he had been parking a vehicle in the street overnight but later had to accept that this is what he was doing but “*few and far between*”. He asserted that he had provided the TC with the vehicle’s tracking record although that was not the case. Mr Self ultimately accepted that it was possibly the case that throughout the life of the licence, the company had not had a suitable operating centre until he had become involved. But steps had been taken to rectify the position. He was taken to his assertion in the joint response that the premises at PLC Commercial continued to be available as an operating centre to the company although it had not been used for a long time. He would not accept that permission to park at those premises had been withdrawn. PLC Commercial had given notice that they did not wish to maintain the vintage vehicle because it had not been presented for a PMI, but no mention was made in the letter about the withdrawal of the parking facility. He accepted that the company was not paying to park at PLC Commercial at

which point, Mr Shore interceded and stated that the vintage vehicle had been in Exeter at the material time having a new engine fitted and that PLC Commercials had not mentioned anything about parking. In any event the individual concerned at PLC Commercials was a “*nasty, vindictive piece of work*”. The company had not parked there since February 2017. The TC suggested that it was “*pushing it*” to suggest that PLC Commercials was the company’s primary operating centre when vehicles had not been parked there for 20 months. Mr Shore explained that this was because all the maintenance on the vehicles was now undertaken by Bourne Recovery and they had produced evidence to show that in 2018 the cost of maintenance was £28,000.

24. Mr Haden told the TC that he was mainly responsible for drivers’ hours. He gave his account as to how he came to be convicted for a second time for drink-driving. He was not a heavy drinker. He knew that he was required to report the conviction but one thing had led to another and he regretted his failure to do so.
25. Mr Barnley told the TC that he owned Barnley House where he conducted his other business interests. There were ten parking spaces at the front of the building which the company could use and would have exclusive use of in the evenings. The building was undergoing refurbishment which had been delayed, hence the mix up with the change in registered address notified on 30 August 2018. He described the location of the office as a small industrial estate with residential properties further down the road.
26. In his closing submissions, Mr Banks highlighted the fact that Mr Self had not previously lost his good repute nor had been disqualified. He had regained his status as transport manager in May 2018 and had understood the restrictions upon him. The relevant undertaking on the licence had then been removed. He had sought the middle ground by becoming a director with three others. Notification of his directorship was made on time. Mr Self had never been to a public inquiry because of failures in maintenance systems. He had been rehabilitated following his bankruptcy order. Maintenance issues could be dealt with by undertakings and an operating centre was now available. Candid admissions had been made in the response to the maintenance investigation. It was accepted that the OTC should have been notified that the vehicles had moved to Bourne Recovery. Everything was now in order.
27. This was not a large operation and it had started as a hobby. The company was prepared to undergo scrutiny and was already audited by First and by Wards Consultancy. Revocation would be the end of Mr Shore’s career in transport and it would have an enormous impact on Mr Self. If revocation was inevitable, then some time should be given for a new application to be made with additional undertakings if necessary. Otherwise, curtailment or suspension were options. All of the directors cared about the business and did not deserve to be put out of it.

The Traffic Commissioner’s decision

28. In his written decision dated 31 March 2019, the TC confirmed that his main concern was that the company had not had an effective and stable establishment in accordance with Article 5 of EU Regulation 1071/2009 (“the Regulations”). With regard to the requirement contained in Article 5(a), Mr Self had changed the correspondence address to Barnley House on 30 August 2018, however, when VE Lowe commenced his maintenance investigation, he could not find the operator at that address three months later. He had to conduct the maintenance investigation at a private house (he did not specify which although presumably it was the home of Mr Self). There was no evidence that the company had moved into Barnley House in January 2019 as stated during the public inquiry.
29. With regard to the requirement contained in Article 5(c), during the summer of 2018 “*complaints*” were being sent to the OTC about parking in Playfields Drive. The TC inserted a Google StreetView image into his decision which showed that the housing on the road in question consisted of bungalows. The TC also inserted an image of the double-decker bus in question (which on any view, was extremely large). This parking was taking place at a time when the premises at PLC Commercials was the nominated operating centre although it had not been used as such since February 2017 when a vehicle failed its MOT test. The TC was sceptical that the company’s vehicles had ever parked at PLC Commercials having been told by Mr Shore that the premises could not accommodate the ex-Hong Kong bus. Further, the company had never paid rent for the use of that facility. Whilst the TC had been told that thereafter, the vehicle was parked at Bourne Commercials, there was no evidence of that. He found that during the summer of 2018, the company had no available operating centre and one vehicle had been parked on a residential street which was wholly inappropriate.
30. Then on 20 August 2018, Bournemouth Coach Park was added as an operating centre to the licence. A letter of permission accompanied the application which gave the illusion that two spaces were reserved for the company. That was not the case. The company had no more right to park at the Coach Park over and above that of anyone else. There was no exclusive parking area or marked bays. It was a first-come, first-served public coach park. It was difficult to see how Regulation 5(c) of the Regulations could be met in those circumstances.
31. A few days before the public inquiry, the company sought to redress this by making an application to first of all, add Barnley House as an operating centre. However, Mr Shore did not consider those premises to be suitable. Mr Barnley stated that the company could have exclusive use of the car park in the evenings although the company was not a nine to five operation. It undertook rail replacement services and worked weekends. Barnley House had other occupants who would need to park. Even without other vehicles present, entering and leaving in forward gear appeared to be a significant challenge. The TC inserted a Google image of the premises. The premises might be suitable for a couple of minibuses but the company had in possession three ex-Blackpool Transport double decker buses and a vintage double decker bus.

32. The second proposed operating centre was a section of car park at a garden centre, The Oaks. The major tenant had delineated an area and the site appeared to be viable but more information was needed. Whilst the TC reminded himself that he was required to consider the company as at the date of the inquiry, he determined that this requirement was not to be taken literally. The application to add the potential operating centre was made five days prior to the public inquiry and two years since the operator stopped using the services of PLC Commercials. There had been repeated complaints about a bus parking in Playfields Drive and VE Lowe was unable to find the operator. Even on the day of the hearing, neither proposed operating centre was demonstrably suitable. He found that s.17(3)(a) and s.17(1)(a) of the 1981 Act had been breached.
33. With regard to the requirement to keep vehicles fit and serviceable, the TC was concerned that the up to date position could not be ascertained because the company had changed its vehicles relatively recently and it used personalised plates. It did not undertake routine brake testing to the frequency required by the Guide to Maintaining Roadworthiness although the Ward audit painted a *“fairly rosy picture”*. Maintenance shortcomings could be addressed with undertakings and so, whilst a finding under s.17(3)(aa) was made, relatively little weight was attached to it.
34. The appointment of three new directors was notified within 28 days of the Companies House record being updated rather than 28 days from appointment. Whilst the TC made a finding under s.17(3)(aa) of the 1981 Act he attached little weight to it.
35. As for the good repute of Mr Self, he had parked a large double-decker bus in a residential street to save him time. That continued even after the OTC intervened. He had been told by the TC that any restoration to running a business would be subject to further scrutiny but he went ahead regardless. In the joint response to VE Lowe’s maintenance investigation, Mr Self had stated *“a replacement number plate has been affixed to the front of F5 HOR in a format that we have been assured will pass any MOT test without question”*. That was a lie. His evidence at the hearing was that he used a number plate he had in his possession which bore a DAF logo. It only took a moment to identify *“number plate law”*. It was not the seriousness of the defect which was of concern but the way in which Mr Self appeared to *“make false statements at will”*. A further example was to be found in Mr Self’s letter dated 7 July 2018 to the OTC when he stated *“we have off road parking for the fleet at our depot”*. The nominated operating centre was PLC Commercials and vehicles had not parked there for over a year at the time Mr Self wrote the letter. There was no evidence to support the statement that the vehicles were in fact parked at Bourne Commercials despite Mr Self stating that it was the company’s intention to nominate those premises as an operating centre. Further, as director and *“senior transport manager”* as Mr Self described himself, he failed to notify the TC of Mr Haden’s conviction. This failing and the apparent condoning of the offence by the payment of the fine and

continued employment of Mr Haden was an aggravating feature in respect of all of the directors.

36. The TC reminded himself that the regulatory system was based on trust. Mr Self *“lied at will. He cannot be trusted. His good repute as transport manager is lost”*.
37. Mr Shore signed the response dated 4 January 2019 in which he confirmed that the company continued to have permission to park at 18 St Georges Avenue but it was the company’s intention to remove this operating centre from the licence. The TC concluded that this statement *“was a lie”*. VE Lowe confirmed that the company was not present at the operating centre in November 2018 and PLC Commercials wrote to the TC to confirm that the company did not have authority to park there. Whilst Mr Shore asserted that PLC Commercials had not informed him that the company could no longer park at its premises, the likely reason was that PLC Commercials had not seen Mr Shore or his vehicles. No rental payments had been made to PLC Commercials. Neither had Mr Shore informed the TC of Mr Haden’s conviction. Mr Shore *“attempts to conceal or bend the truth to suit his position. I find that I cannot trust anything he says and his good repute is lost.”*
38. As Mr Barnley was new to operator licensing, had little to do with the day to day running of the business and appeared to have trusted his co-directors more than was wise, his good repute remained intact.
39. Two of the company’s directors had lied and it had operated without a stable establishment for a considerable period of time. It only acted at the very last minute to nominate what might have been a suitable operating centre. Whilst there did not appear to be any serious maintenance issues, this was not a company that could be trusted in the future and the negative findings were so serious that it deserved to be put out of business. The positive maintenance feature meant that the TC fell short of disqualifying the company from applying in the future and the potential success of any new application would depend significantly upon the competence and determination of the nominated transport manager and on the suitability of the operating centre. The timing of the revocation meant that there would be a period during which vehicles could not be operated should the company re-apply. This was appropriate given the very lengthy period of non-compliance.

The Appeals

40. At the hearing of these appeals, Mr Self and the company were represented by Mr Pojur of Counsel. There were three grounds of appeal:
 - a) The TC erred in revoking the company’s licence as the consequences were disproportionate;

- b) The TC erred in finding that Mr Self had lost his good repute and ought to be disqualified as there was an insufficient basis for doing so. In particular the TC was wrong to conclude that Mr Self had acted dishonestly.
- c) The disqualification of Mr Self was in itself a disproportionate response.
41. Mr Pojur expanded on the above. He submitted that the TC attached too much weight to the lack of stable establishment, the statements that Mr Shelf and Mr Shore had made which the TC concluded were untruthful and the failure to notify the TC of Mr Haden's conviction. He described the directors as simply "*trying to make a living*". Mr Shore had been awarded an MBE for services to the transport industry. The problems identified had all been rectifiable including the absence of suitable operating centre. The TC had since been provided with further details in relation to The Oaks and upon that basis a stay had been granted. Mr Haden was being removed as a director. In any event, his conviction should not have reflected adversely on the other directors and it was not proportionate to do so. The parking of a large double decker bus in a residential road was "*understandable*" as Mr Self had wished to spend more time with his family and he had in any event, desisted from parking any commercial vehicles outside of his property. Mr Pojur was critical of the TC's tone and language during the hearing and submitted that despite the long standing absence of a stable establishment and the various assurances and commitments expressed in correspondence with the OTC and VE Lowe about the position being regularised, that revocation was nevertheless disproportionate. It was pointed out to Mr Pojur that the rental agreement for The Oaks was not signed until 7th May 2019, some two and a half months after the hearing and six weeks after the TC's written decision. Up until the time when that agreement was entered into (at a monthly rent of £758), the company had been unfairly competing with other public service vehicle operators who were either renting or maintaining operating centres. Mr Pojur's response was that unfair competition was not a matter taken into account by the TC and in any event, that still did not warrant revocation. If necessary the company could make a charitable donation to address this issue.
42. Mr Self and Mr Shore took issue with the TC describing them as liars. Whilst Mr Self had made an error in relation to the fitting of the second unlawful number plate, he maintained that he had been told that the second plate would pass any MOT test. He might have been reckless or careless in fitting the second plate but he had not lied about what he had been told. Further it was wrong to conclude that simply because the company had paid Mr Haden's fine and had "*looked after him*" that they had condoned his conduct. As for Mr Shore, the TC had used unjudicial language in determining that Mr Shore had lied. The decision of the TC was unbalanced and unfair and the reputations of the company, Mr Self and Mr Shore should be restored.

Discussion

43. This was a bad case of longstanding failure to satisfy the requirements for an effective and stable establishment as set out in Article 5 of the Regulations.

Indeed, there was no evidence before the TC, apart from bare assertions made by the directors, that the company had ever used PLC Commercial as its operating centre. Even on the evidence of the company, PLC Commercial had not been used as either an operating centre or as its nominated maintenance contractor since February 2017. Upon the basis of that concession alone, the company had not been using its operating centre for two years by the time it was called to a public inquiry. The response to the complaints made about Mr Self parking a double decker bus in a residential area was to nominate a public coach park as an additional operating centre. The TC's determination that a public coach park could not satisfy the Regulations in the absence of evidence to show reserved bays or a restricted access area was plainly right. It was naïve of the directors (to say the least) to consider that public coach parks would be suitable. Whilst it was contended that the company was in fact using the premises at Bourne Recovery as its operating centre, there was no evidence of that either (by way of example, a letter from Bourne Recovery confirming the position, a parking agreement, invoices for rent owed on parking). All that the TC had before him was inappropriate parking in a residential area, the use of public coach parks and a catalogue of either incorrect or misleading or empty statements of intent which were not followed through.

44. Examples of the above:

- a) Mr Self in his letter dated 7 July 2018 to the OTC with regard to parking in Playfield Drive informed the TC there the was "*sufficient parking at the depot*". This was a misleading statement as by that stage, the depot, being PLC Commercial, had not been used since February 2017 and if it was meant to be a reference to Bourne Recovery, that was and never had been named on the licence as an operating centre;
- b) The addition of Bournemouth Coach Park as an additional operating centre, authorising two vehicles and supported by a letter, was again misleading for reasons that the TC set out. It was nothing more than a public coach park but its addition gave the impression of a formal arrangement. Even then, the company's vehicles were in fact being parked at Poole Stadium Coach Park;
- c) By the letter of 23 December 2018, signed by three directors and "PP'd" on behalf of Mr Barnley, VE Lowe was informed that the company would be adding to its licence, operating centres at Barnley House and Bourne Transport "*this afternoon*". That was not true and as it transpired, Mr Shore was ultimately unaware that Barnley House was nominated, albeit five days before the public inquiry and he did not consider it to be suitable for such use. Yet he, along with Mr Self, was one of the signatories to the letter of 23 December 2018. Either Mr Shore was being untruthful or he did not discharge any material management function in the company and was unaware of the reality. Neither proposition is attractive;
- d) On 4 January 2019, Mr Shore wrote to the TC confirming that the company still had permission to park at "*18 St Georges Avenue*" when that was plainly not the case and the statement was at the very least misleading. Again, the alternative explanation is that Mr Shore did not

discharge any material management function in the company and was therefore unaware of the reality.

45. In light of the above, we are satisfied that revocation of the licence was justified on the issue of stable establishment alone. There was little by way of positive considerations to be balanced against the negative. The TC rightly did consider the maintenance position in this regard and did step back from disqualifying the company to allow for a new application to be submitted and that is what the company should have been working towards whilst it has had the benefit of a stay. The TC asked himself the correct questions i.e. could he trust the company moving forward (the Priority Freight question) and was the conduct of the company so serious that it deserved to be put out of business (the Bryan Haulage question). His answers to those questions are not open to criticism.
46. As for Mr Self, either he was careless as to the statements that he made in the context of a regulated industry or he made statements intending that they misled those who were responsible for ensuring compliance. It is of note, for example, that when giving evidence in the public inquiry, he at first denied that he had been in the habit of parking public passenger vehicles outside of his house overnight which was in sharp contrast to his letter of 7 July 2018 in which he accepted that vehicles were so parked "*one or two separate evenings a week*". Whilst he eventually accepted the position in evidence, the fact that he felt able to initially deny the fact speaks volumes. His evidence about the number plate was unsatisfactory to say the least. Whatever the position with regard to what he may or may not have been told about the second number plate being lawful, he was a qualified transport manager and having had one number plate identified as being unlawful, it was incumbent upon him to ensure that the second plate was lawful. He did not do so. It is of note, that both number plates had been custom made (over and above setting out the registration number) as they both featured the words "*Dekkabus – There's always room on top*". The TC was in the best possible position to assess Mr Self as a witness and to come to unpalatable conclusions about a witness where appropriate. We are slow to interfere with such findings and we are certainly not prepared to do so in this instance. The TC's conclusions were well within the ambit of his fact-finding role.
47. As for Mr Self generally, it was he who changed the registered office details of the company to Barnley House on 30 August 2018 and then failed to notify the TC of the delay in the move. Whilst he had relied upon injuries suffered in the accident in October 2018, no medical evidence was produced in that regard. He was responsible, as transport manager and as a director, to ensure that the TC was informed of Mr Haden's conviction. It was he, as transport manager and director, who was responsible for ensuring that the company had an operating centre which was available for its use and that it was used. The fact that he thought nothing of parking in a residential street demonstrates that he does not take his responsibilities seriously. We are satisfied that the TC was not plainly wrong to conclude that Mr Self had lost his good repute and we are not satisfied that the inevitable period of disqualification represented a disproportionate response in this case. Neither are we satisfied

that the length of disqualification is open to criticism bearing in mind the TC's findings that Mr Self had been untruthful in his dealings with the OTC and with the TC.

48. The TC's decision that Mr Shore had not told the truth in his correspondence is not open to criticism. A good example, is his correspondence and evidence relating to Barnley House. On 23 December 2018, Mr Shore signed a letter advising that Barnley House would be nominated as an operating centre that afternoon. It was not and he has now accepted that the premises are not suitable as an operating centre. Why then did he sign a letter confirming that it was to be nominated as such? It is implicit that in signing the letter, he was asserting that in his view, it was suitable. The comments about the company in paragraph 43 above are equally applicable to Mr Shore. He has managed a company which has been seriously non-compliant with the requirement to have an effective and stable establishment. Even at the date of the public inquiry, suitable arrangements to satisfy the requirements had not been made or evidenced. If his failings from October 2018 were caused or contributed to by the injuries he suffered in the road traffic accident, then there was no medical evidence in support of that. What is odd however, is that having found, in the body of his decision, that Mr Shore had lost his good repute, the TC did not then make that formal finding in the order section at the beginning of his decision. It may be for that reason (we did not enquire) that Mr Shore did not in fact appeal the TC's decision in his own right. However, it is clear from the TC's decision not to disqualify Mr Shore as a director that he did not take such a dim view of Mr Shore's conduct when compared to that of Mr Self. It may be that with the benefit of time having now passed and that the TC clearly considering it appropriate for the company to apply for a new licence with the necessary safeguards in place, that such an application may be Mr Shore's opportunity to convince the TC that hard lessons have been learnt and that he should be allowed a further opportunity to manage a compliant operation without involvement of Mr Self.

Conclusion

49. We are satisfied that the TC's decision was not plainly wrong in any respect and that neither the facts or the law applicable in this case should impel the Tribunal to allow this appeal as per the test in Bradley Fold Travel & Peter Wright v Secretary of State for Transport (2010) EWCA Civ.695. The TC's orders will come into effect at 23.59 on 14 October 2019.



**Her Honour Judge Beech
2 September 2019**