



Neutral Citation Number: [2020] UKUT 261 (AAC)

Appeal No. T/2019/71

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

**IN AN APPEAL FROM THE DECISION OF
Miles Dorrington, Deputy Traffic Commissioner for
Wales dated 30 October 2019**

Before:

Her Hon. Judge J Beech, Judge of the Upper Tribunal

Appellant:

**ALAN JOHN WOOLLEY trading as
DOLPHIN TRAVEL**

In attendance by telephone: Helen Newbold of Smith Bowyer Clarke on behalf of the Appellant.

Heard at: Preston Combined Court Centre, Ringway, Preston, PR1 1LL

Date of hearing: 24 March 2020

Date of decision: 26 May 2020

DECISION OF THE UPPER TRIBUNAL

IT IS HEREBY ORDERED that the appeal be dismissed.

SUBJECT MATTER:- Loss of good repute; revocation; disqualification; proportionality; whether the requirement for an audit from the FTA or RHA was anti-competitive; inconsistency in approach in disqualifying transport manager with immediate effect but delaying revocation for eight weeks to allow the Appellant time to continue operating and apply for a new licence without a period of grace

CASES REFERRED TO:- 2002/217 Bryan Haulage (No.2); 2009/225 Priority Freight; T/2014/25/26 H. Sivyer (Transport) Ltd and Simon Sivyer; Bradley Fold Travel Ltd v Secretary of State for Transport (2010) EWCA Civ 695

REASONS FOR DECISION

Introduction

1. This is an appeal from the decision of the Deputy Traffic Commissioner for Wales (“the DTC”) made on 30 October 2019 when he made the following determinations in respect of the Appellant (“Mr Woolley”) under ss.17 and 14ZA(2) of the Public Passenger Vehicles Act 1981 (the Act):
 - a) Mr Woolley had lost his good repute and as a result, his standard national PSV licence was revoked from 00.01 hours on 1 January 2020 under s.17(1)(a) and s.14ZA(s) of the Act;
 - b) The licence was also revoked under discretionary powers under s.17(3)(aa) of the Act;
 - c) As a result of the finding set out in a) above, Mr Woolley was disqualified as a transport manager with immediate effect for a period of 12 months. The DTC directed that Mr Woolley must complete a PSV transport manager CPC registered training course prior to holding another position as transport manager;
 - d) With a different transport manager and a fully compliant Road Haulage Association (“RHA”) or Freight Transport Association (“FTA”) maintenance and traffic audit, any new application made by Mr Woolley would be looked at favourably.
2. This appeal was originally listed to be heard at Field House, the Tribunal’s hearing centre in London. As a result of the Covid-19 pandemic restrictions and the “lockdown” imposed on 23 March 2020, it was not possible for the hearing to take place as an attended in person hearing either at Field House or an alternative hearing centre. In the circumstances, rather than adjourning the hearing, the appeal was re-listed to be heard by telephone in Court 6 at Preston Combined Court Centre. The reason for doing so was that it was in the interests of justice for the appeal to be heard, a stay of the DTC’s decision having been refused and so it followed that Mr Woolley was not operating vehicles. Further, as it was not possible for the specialist members to attend the hearing, it was determined that in the interests of justice, the hearing could and should be conducted by Judge alone. In making the above decisions, the Tribunal had regard to fairness, the principles of natural justice and the overriding objective and the Pilot Practice Direction: Panel Composition in the First-tier Tribunal and Upper Tribunal dated 19 March 2020 and the Pilot Practice Direction: Contingency Arrangements in the First-tier Tribunal and the Upper Tribunal dated 19 March 2020.

Background

3. The background relevant to the appeal can be found in the appeal bundle, the transcript of the hearing and the DTC’s oral decision and is as follows. Mr

Woolley was granted a standard national operator's licence effective from 20 August 2002 authorising two vehicles with two discs in possession. Mr Woolley's operating centre was in Llangefni, Anglesey at his home address; he was the nominated transport manager and the preventative maintenance inspections ("PMIs") were scheduled for every four weeks. Mr Woolley operated two thirty-three seater coaches and his work mainly came from local authority school contracts supplemented by a small amount of private work.

4. On 2 August 2018, Mr Woolley attended a public inquiry before TC Jones for him to consider the following issues:
 - a) Whether the statements of intent made by Mr Woolley when applying for his operator's licence were either false or had not been fulfilled and in particular whether the PMI intervals were being abided by and whether vehicles were being kept at the operating centre when not in use;
 - b) Whether the undertakings given by Mr Woolley had been complied with and in particular:
 - i. whether the rules on drivers' hours and tachographs and record keeping were being observed;
 - ii. whether vehicles were being kept fit and serviceable;
 - iii. whether there was an effective driver defect reporting system;
 - iv. whether records were being kept for 15 months;
 - c) Whether there had been a failure to notify the TC of a change in operating centre;
 - d) Whether Mr Woolley's vehicles or drivers had been issued with prohibition notices in the previous five years;
 - e) Whether there had been a material change in the circumstances of Mr Woolley as operator and in particular whether vehicles were no longer parking at the specified operating centre;
 - f) Whether an application for an increase in authorisation by one vehicle should be granted.

5. At the conclusion of the hearing, the TC made adverse findings on all of the above matters and found that Mr Woolley's good repute as an operator was retained but his good repute as a transport manager was tarnished, such finding being based upon the fact that Mr Woolley had already booked a place on a specialist transport manager refresher course. The licence was curtailed for a period of one month by one disc and the application for an increase in authorisation was refused. Fresh undertakings were given and recorded on the licence and were as follows:
 - a) Mr Woolley would pay for an independent audit of maintenance systems and documentation within twelve months of the hearing with copies being filed with the Office of the Traffic Commissioner ("OTC") and the DVSA;
 - b) Roller brake testing ("RBT") would be conducted at least every other PMI (i.e. at least every eight weeks);
 - c) Mr Woolley would attend a specialist two-day transport manager refresher course within three months of the hearing and a certificate of attendance filed with the OTC.

Mr Woolley complied with c) above on 15 August 2018.

6. On 11 June 2019, Vehicle Examiner (“VE”) Kyriacos carried out an unannounced maintenance investigation the outcome of which was marked “unsatisfactory” for the following reasons:
- a) Maintenance facilities: whilst there was an inspection pit to allow for underside inspections, the width of the yard did not allow inspection of the exterior of the vehicles whilst positioned over the pit and there were no undercover facilities;
 - b) PMI records: on occasion, there was no record of mileage or a signed declaration of roadworthiness on the records. The records were not completed in a timely manner with notebooks being used to record some details of inspections but they lacked detail to fully complete a PMI record which were not completed until weeks later;
 - c) PMI intervals: were stretched up to 8 weeks;
 - d) A record of a wheel torque check was recorded on the PMI sheets and a separate book was also in use to record torques on different dates but re-torqueing was not recorded and wheels were not identified. Advice was given;
 - e) It was difficult to calculate the weeks in between set intervals for PMIs on one of two forward planners in use. Advice was given;
 - f) There had been two annual test presentations since 2 August 2018. One vehicle failed on first presentation on 27 March 2018 as a result of a seatbelt issue and one failed on first presentation on 2 May 2019 as a result of issues with its road wheels, exhaust system, steering and headlamp aim. It followed that there was a 100% failure rate since the previous public inquiry. Mr Woolley’s explanation for the first failure was that the vehicle had been bought with a lap seat belt fitted to one of the seats and having spot checked the vehicle “*nothing was implied that it wasn’t acceptable*”. Once he had been made aware of the issue at MOT, a three-point seatbelt was fitted within the hour. As for the second failure, the parts for the defects identified had already been ordered but were not delivered prior to the MOT and it was too late to cancel the appointment;
 - g) At the time of the investigation, Mr Woolley had failed to commission an audit of his maintenance systems and documentation in compliance with the undertaking he gave on 2 August 2018;
 - h) Whilst there had been an improvement with RBT with vehicles being taken for RBT to Arriva in Bangor and whilst Mr Woolley had incorporated the RBT intervals on his forward planner, the dates had not been adhered to and the PMIs and the RBT intervals had been exceeded.

VE Kyriacos concluded that whilst most shortcomings identified in her visit in May 2018 had been rectified, Mr Woolley would benefit from third party assistance or auditing to ensure requirements were understood and compliance continually met. The maintenance shortcomings identified did not however, lead to concern over Mr Woolley’s ability to maintain his vehicles in a fit and roadworthy condition. Mr Woolley was nevertheless not complying with the Statement of Intent with regard to maintenance nor

with the additional undertakings agreed to during the public inquiry held on 2 August 2018.

7. On 23 September 2019, the OTC and VE Kyriacos received an Operator Licence Compliance Maintenance Audit prepared by John Sheridan trading as JLR Haulage Consultancy and carried out on 7 August 2019 (six days after the date by which it should have been filed). The following is of note:
 - a) At paragraph 1.3, the RBT undertaking recorded on the operator's licence was incorrectly stated as requiring RBT "*at least every other PMI (12 weekly)*";
 - b) At paragraph 1.14 "Safety Inspections", it was recommended that Mr Woolley gain IRTEC Qualification Training "*to meet current standards*". The report did not state which of the current standards Mr Woolley was not meeting;
 - c) At paragraph 2.1 "Maintenance Planner", similar observations to those made by TE Kyriacos about the forward planner were made. It was recommended that a different style of forward planner be used to ensure that it was clearly understood and to allow for a further six months forward planning;
 - d) At paragraph 2.4 "Brake performance assessment", it was recorded that "*There was evidence of sporadic brake performance assessments being carried out in the form of brake roller testing, but these did not all fall in line with safety inspections that have carried out*" (sic);
 - e) At paragraph 2.19 "Facilities for inspections", the same concerns as those raised by VE Kyriacos were recorded. It was recommended that there be a site risk assessment of the operating centre;
 - f) At paragraphs 3.10 and 3.11, it was recorded that public liability and employer's liability insurance "*expires*" on 19 June 2019. There was no reference to current insurance cover. This was not explored during the public inquiry.

Public Inquiry

8. By a call up letter dated 19 September 2019, Mr Woolley was called to a public inquiry to be held on 30 October 2019. At that stage, the OTC had not received the audit that Mr Woolley had undertaken to file with the OTC by 2 August 2019. The purpose of the hearing was for the DTC to consider the shortcomings identified by VE Kyriacos in her report.
9. The hearing was attended by Mr Woolley who was represented by Ms Newbold, barrister with Smith, Bowyer, Clarke. VE Kyriacos was also in attendance. By way of introduction, the DTC noted the previous public inquiry and Mr Woolley's attendance on a CPC refresher course and noted that ten months after that attendance, VE Kyriacos had found shortcomings in Mr Woolley's maintenance systems similar to those found in 2018. The DTC advised that having considered the Senior Traffic Commissioner's Statutory Document No. 10 that his provisional view was that the entry point for regulatory action was "*severe*" (revocation and disqualification) to "*serious*"

(revocation and consideration of disqualification or suspension or significant time-limited curtailment of the licence).

10. VE Kyriacos then gave evidence. She confirmed that she had considered the documentation produced by Mr Woolley that morning. She had noted that Mr Woolley was now using a forward planner which was easier to read and which had been completed correctly into 2020. The PMIs were planned at four weekly intervals as were the RBTs. She considered that Mr Woolley had heeded the advice she had given to him at the time of the investigation although she highlighted that whilst the undertaking required RBTs to take place at least every eight weeks, brake testing should in fact take place at every inspection (using a Tapley metre). The wheel torque book had been replaced with a wheel torque register which the VE had difficulty interpreting although Mr Woolley and his son, who assisted him in his business, were able to interpret it. It did not obviously differentiate between torqueing at inspection and torqueing following wheel removal. Further, when a wheel was removed and torqued, there was no re-torqueing procedure. Further advice had been given that morning about amending the register to include a subsequent torque. VE Kyriacos considered that otherwise, there had been improvements in the majority of areas since August 2018. She considered that Mr Woolley would benefit from third party input to address the continuing issues around document retention, recording and intervals.
11. VE Kyriacos confirmed that Mr Woolley had fully cooperated during her investigation. If Mr Woolley had disagreed with the MOT failure for the lap seat belt, he could have complained, but did not do so.
12. Mr Woolley then gave evidence. He told the DTC that his operation was a small family business. He had installed the inspection pit and taken other steps to improve his maintenance systems and had accepted and followed the advice of VE Kyriacos. He had "*taken on board*" the VE's advice about the use of a Tapley metre to check brakes at inspections and there was no shortage of RBT facilities in his area. He had believed that he had a window to undertake RBTs but would now undertake brake testing every four weeks. As for wheel torqueing and re-torqueing, he explained the new system he had instituted. He accepted that the record did not show any re-torqueing (a matter which caused the DTC considerable concern). Mr Woolley had arranged for a third party to visit the operating centre (John from Anglesey training) who had offered to visit again if Mr Woolley needed advice. Mr Woolley had also been attempting to arrange IRTEC training but could only find providers in Wolverhampton and Lancaster. He had asked for course information to be sent to him.
13. Mr Woolley considered that all he needed was for someone to "*give him a nudge*" when legislation had changed. He had improved the torqueing records and the brake testing. He could not say why Mr Sheridan had stated that the requirement to undertake RBT was every twelve weeks; it must have been "*a typo*". He had instructed Mr Sheridan to undertake the audit in good time and Mr Sheridan had visited in February 2019 but had not produced the audit report until August. Mr Woolley did not consider this to be his

responsibility. He accepted that there was work still to be done to improve his systems. He intended to replace both of his vehicles to improve the MOT rate. He agreed with the DTC that he would not be happy for his children to use school transport in vehicles which had failed their MOTs and when there was no re-torquing procedure. He would learn from his mistakes and he would improve.

14. VE Kyriacos was asked for her opinion having heard Mr Woolley. Whilst she did not suggest that Mr Woolley was not capable of compliance, she was concerned about whether he would be compliant in the future. She highlighted that the PMI records presented to her for inspection were different to those presented to Mr Sheridan and there were records that he had seen, which she had not (this matter was not further explored). She considered there to be a “*mismatch*” between her report and that of Mr Sheridan.
15. Ms Newbold accepted that there were inconsistencies between the VE report and the audit, which she described as “*confusing*”. She accepted that this would not give the DTC much confidence in the audit. However, Mr Woolley was prepared to give a further undertaking that he would arrange for a further audit with a different company to reassure the DTC.
16. In response to the DTC’s request that Ms Newbold address him on revocation, disqualification and the STC’s Statutory Document No. 10, Ms Newbold considered that the DTC’s starting point should be at the “*bottom end of severe*”. The negatives were the MOT failure rate and the unsatisfactory maintenance investigation and the positives were Mr Woolley’s co-operation with VE Kyriacos’ investigation, the absence of any prohibitions, an effective driver defective reporting system, and an effective management and control system although it was not 100%. The outstanding issues were wheel re-torquing and RBT.

The Deputy Traffic Commissioner’s decision

17. In his oral decision at the conclusion of the hearing, the DTC listed the negatives in the case: this was the second public inquiry in less than eighteen months; there was no effective wheel re-torquing procedure which the DTC considered to be a “*reckless act*” resulting in an undue risk to road safety; there was no brake testing between the scheduled RBT despite assurances given at the previous hearing; Mr Woolley had taken a two-day transport manager CPC refresher course only two weeks after the last public inquiry; further advice had been given by the VE in June 2019; an audit undertaken in August 2019 raised the very same issues as those raised by the VE in June 2018; there was ineffective management control and insufficient or no proper systems or procedures to prevent compliance failings; a 100% MOT failure rate; a previous unsatisfactory maintenance investigation with many of the same failings identified in both; chaotic and confusing paperwork; information contained in the audit Mr Sheridan which differed from the information provided to the VE; the VE doubted whether Mr Woolley was able to understand how to be compliant on his own; he had not been effective as a transport manager since the last public inquiry.

18. The positives were Mr Woolley's co-operation with the VE; the absence of prohibitions; there had not been any deliberate flouting of the law; there had been improvements since the last public inquiry although compliance had not been achieved; Mr Woolley had used a third-party auditor although the report was late; Mr Woolley's attendance on a transport manager refresher course, although this was described by the DTC as a "*double edged sword*" and the drivers had "*done some training*".
19. The DTC determined that the negatives significantly outweighed the positives; lessons had not been learned despite a previous public inquiry, advice from VE Kyriacos, a refresher course and an audit. As a result, the case fell into top of the serious category. The DTC answered the Priority Freight question in the negative as he had little confidence that Mr Woolley would be compliant in the future. The DTC was more than satisfied that the Bryan Haulage (No.2) question should be answered in the affirmative and he determined that these answers were proportionate on the findings of fact he had made. Mr Woolley had lost his good repute as both an operator and as a transport manager. The DTC therefore made the orders set out in paragraph 1 above. The DTC advised that in delaying revocation to 1 January 2020, the DTC was allowing Mr Woolley time to wind down his business, that decision being influenced by the fact that Mr Woolley had received further clear advice from the VE that morning, which Mr Woolley was required to follow. There was no reason why Mr Woolley could not return to the industry as an operator but with a different transport manager and that if he were to provide a fully compliant maintenance and traffic audit, undertaken by the FTA or RHA (as they were the only two organisations that the DTC would trust having seen Mr Sheridan's audit) and provided a new application was completed to demonstrate that the statutory requirements were met, a new licence could be granted without a public inquiry. Mr Woolley had "*just enough time*" to act upon the DTC's advice but what the DTC could not do was to give any further time for Mr Woolley's vehicles to be on the road until the DTC was satisfied that the operation was compliant.
20. VE Kyriacos sought clarification of the DTC's findings in respect of the delayed revocation. As Mr Woolley was disqualified with immediate effect from being a transport manager but the revocation had been delayed, she asked whether the DTC was allowing the licence to continue without a transport manager until 1 January 2020? The DTC responded:

".. you were at significant pains to explain to Mr Woolley in the foyer, you've said, about what has to be done, and only if that is done am I allowing that to happen ... if I shut the business down today what would happen to the travelling members of the public? And I've given Mr Woolley the benefit, and it's a big benefit of the doubt, that he's going to listen .. to what you've said today to do that right to give me some assurance that, till the licence comes to an end, those things that you've impressed yet again upon him to be done will be done. But I've done it for the benefit of everyone here today by reading out and now explaining in detail. It is with reservation I do it, but I've given him the opportunity to do it ... I say that because many of the things, whilst they

are road safety critical, haven't resulted in an accident or serious injury or anything yet, but I've had to undertake that balancing exercise .. and the reason I've set 1st January is it takes this operator up to the end of term .. and the Christmas period .. but I hear what you say".

VE Kyriacos sought further clarification. She just wanted to know whether Mr Woolley was being given a period of grace to operate without a transport manager. The DTC responded:

"It's not a period of grace .. because I will refuse a period of grace .. because .. I am not satisfied at this stage .. that there's anything beyond mere hope and aspiration at the moment that it would be achieved to a compliant level. But I'm allowing, as we all do when a licence revocation is set into the future, for a period to unwind. .. I have to take on board the advice you've given and to give a reasonable time. So it's a difficult one to do, particularly with PSV with the, not here, registered services, but there the school contracts. .. So, Mr Woolley, I'll say it again, you've got to what date and time was set, and it's been recorded, I've made that clear .. that's why I'm allowing it to carry on for that time."

The appeal to the Upper Tribunal

21. At the hearing of this appeal, Ms Newbold represented Mr Woolley and attended by telephone having earlier submitted a skeleton argument for which the Tribunal was grateful. The first ground of appeal was that the DTC should have answered the Priority Freight question in the affirmative and that the revocation of Mr Woolley's operator's licence was disproportionate. The documents produced at the public inquiry by Mr Woolley were all in order. There was an issue with RBT intervals but Mr Woolley only operated two vehicles for school contracts with the vehicles in service for two hours a day each in total. The mileage covered was low. There was an issue with Mr Woolley's torqueing procedure but one was in place and a new procedure could be demonstrated at the day of the hearing. As for the 100% MOT fail rate, the OTC had overstated the problem, there having been only two tests in one year. Whilst the VE's report had been marked as "unsatisfactory", the PG13F&G showed that there were only two unsatisfactory findings and at the hearing VE Kyriacos accepted that most of the shortcomings identified in 2018 had been rectified and further improvements had been made since the public inquiry in 2018. It was submitted that the DTC failed to take account of this evidence and therefore failed to give sufficient weight to the improvements in compliance. In the circumstances, the DTC failed to consider the up to date position.
22. The second ground of appeal concerned the decision of the DTC to allow the licence to continue until 1 January 2020 in the expectation that Mr Woolley would continue to operate his vehicles whilst running down his business and at the same time, making a fresh application for a licence but without a period of grace. Ms Newbold submitted that the DTC's decision was unlawful and it had deprived Mr Woolley of the opportunity to appoint an external transport

manager and had resulted in him operating without a transport manager. The DTC's approach was disproportionate and did not make sense.

23. The third ground challenges the proportionality of the DTC's decision to find that Mr Woolley was not of good repute and to disqualify him as a transport manager for twelve months with immediate effect whilst further requiring him to undertake a CPC refresher course prior to applying for a further position as transport manager. Ms Newbold submitted that professional competence was obtained by passing or holding a recognised CPC qualification as per the decision in T/2014/25/26 H. Sivyer (Transport) Ltd and Simon Sivyer. The DTC failed to give reasons why he had determined that Mr Woolley had lost his professional competence. In any event, the order of disqualification for a period of 12 months was disproportionate.
24. The last ground of appeal concerns the DTC's indication that if Mr Woolley were to make a new application for a licence, providing a fully compliant audit by the FTA or FHA, then the application would be granted. Ms Newbold referred to paragraph 73 of the STC's Statutory Document No. 10 concerning undertakings offered by operators to carry out a full systems audit to test the robustness of new systems put in place by an operator and relied upon the following passage:

"While traffic commissioners cannot recommend or endorse a particular auditor, operators will need to ensure that the quality of the audit is of high enough standard".

In specifying the two organisations that he would trust in this case, the DTC fell foul of the above guidance and demonstrated that he was not acting impartially nor was he promoting fair competition by preventing Mr Woolley to seek a competitively priced audit from accredited organisations other than those identified by the DTC. Ms Newbold advised that the RHA does not undertake audits of PSV operators and in order to obtain a preferential rate from the FTA, an operator is required to join. Ms Newbold accepted that the DTC was not impressed with the auditor that Mr Woolley had used but submitted that Mr Woolley's geographical location meant that his choice of auditors was restricted. In any event, what would be the purpose of an audit when the operator's licence had been revoked?

Discussion

25. The compliance history in this case is poor. Mr Woolley operated two vehicles yet despite a previous public inquiry, undertakings given, a CPC refresher course, a second maintenance investigation with advice given and an audit (which raised more questions than it answered), Mr Woolley's systems were not compliant. Brake testing was not taking place every four weeks; the MOT failure rate since the previous public inquiry was 100% and there is no basis to suggest that this percentage was in some way overstated. A safety critical procedure was not in place i.e. wheel re-torquing. It is not surprising in the circumstances that the VE was doubtful that Mr Woolley would be compliant in the future, even though he was capable of

being so. The VE's findings on investigation as set out in paragraph 6 above provided ample evidence upon which to come to that conclusion. The DTC undertook a reasoned and proportionate balancing exercise and in the circumstances, the first ground of appeal fails.

26. The second ground of appeal concerns the DTC's determination to permit Mr Woolley to continue to operate his vehicles until the date of revocation but without granting him a period of grace. Whilst the VE sought clarification of that determination, the DTC did not state in response, that Mr Woolley was required to source the services of a Transport Manager (which in all likelihood he would not have been able to do in the short period allowed) but made it clear that Mr Woolley could "carry on" to revocation. In reality, he was granting a period of grace. Ms Newbold informed the Tribunal that Mr Woolley had continued to operate until the date of revocation as he was permitted to do by the DTC and without an alternative transport manager. In the circumstances, whilst the DTC's approach was somewhat confusing, nothing rests on the point and the ground of appeal fails.
27. Turning then to third ground of appeal, it is unsustainable upon the facts of this case to suggest that the finding that Mr Woolley had lost his good reputation was disproportionate. Ms Newbold in her submissions referred to a finding of loss of professional competence but that was not the finding that the DTC made. Once he had determined that Mr Woolley had lost his reputation as a transport manager, he was required to disqualify him (and the period of 12 months was a reasonable and proportionate order to make) but he was also entitled to find that Mr Woolley should attend a further CPC refresher course before being considered as transport manager on any licence at the end of the disqualification period. That was not only an order he was entitled to make but a sensible one bearing in mind Mr Woolley's failure to present as a compliant operator as at the date of the public inquiry having attended a CPC refresher course, ten months prior to the hearing. This ground of appeal fails.
28. Finally, to the fourth ground of appeal, the purpose of a further audit in this case was to satisfy the DTC that any new licence which Mr Woolley wished to apply for would be for a compliant operation. It was envisaged that Mr Woolley would continue to operate his vehicles whilst applying for that licence and so it follows, that there would be vehicle operation until the date of revocation which could or would have been the subject of a further audit. And it is often the case when TCs are dealing with operators who have relied upon the reports of independent auditors which were in some way unsatisfactory, for the TC to allow or require an operator to obtain a report from an alternative, established and reputable auditor and it is often the case that Traffic Commissioners will identify the RHA and FTA as examples of reputable and reliable auditors. The DTC did not describe the two organisations as examples of established and reputable auditors in this case (when he probably should have done), but there is a list of approved auditors kept by the DVSA as a starting point when operators are required or wish to obtain an audit from a recognised provider. In this case, the identity of a suitable auditor could and should have been raised in correspondence (if not at the hearing) along with a request that an alternative provider be considered.

Ms Newbold informed the Tribunal that in fact Mr Woolley had not and did not intend to apply for a new licence and therefore did not intend to obtain an audit. He is now retired. As a result, nothing rests on this point and the ground is dismissed.

Conclusion

29. None of submissions made on behalf of Mr Woolley have succeeded and in the circumstances, the Tribunal is satisfied that the DTC'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 appeal is dismissed.

A handwritten signature in black ink, appearing to read 'Judge Beech', written in a cursive style.

**Her Honour Judge Beech
26 May 2020**