



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

**Appeal No. UA-2024-000310-T
[2024] UKUT 268 (AAC)**

**ON APPEAL from a DECISION of the SENIOR TRAFFIC COMMISSIONER (in the
WESTERN TRAFFIC AREA) taken on 19 February 2024**

Before: Mr E Mitchell, Judge of the Upper Tribunal
Dr P Mann, Specialist Member of the Upper Tribunal
Mr G Roantree, Specialist Member of the Upper Tribunal

Appellant: Carmel Coaches Ltd

Commissioner's ref: PH2069411

Representation: Mr Hazell (director of Carmel Coaches Ltd)

Heard at: Cardiff Civil Justice Centre, Park Street, Cardiff on 19
August 2024

Date of decision: 24 August 2024

DECISION OF THE UPPER TRIBUNAL

This appeal is dismissed.

Subject matter: *good repute; professional competence*

Case law referred to: *Biogen Inc. v. Medeva Ltd* [1997] RPC 1

REASONS FOR DECISION

Background

1. The sole director of the Appellant company, Carmel Coaches Ltd, is Mr Anthony Hazell. The Traffic Commissioner's decision describes a significant regulatory history associated with the Appellant and Mr Hazell:

(a) 6 June 2014 – following a public inquiry, a Traffic Commissioner revoked a standard international licence held by Carmel Coaches Ltd, which had authorised use of 40 vehicles;

(b) 31 December 2020 – following a public inquiry, a Traffic Commissioner revoked a standard international licence held by Carmel Coaches Ltd, which authorised use of 14 vehicles. In revoking the licence, the Commissioner found that “vehicles were not maintained in a fit and serviceable condition and had been the subject of prohibition notices” and “Mr Hazell appeared to mistake experience for expertise”. The Commissioner also found that Mr Hazell had lost his good repute as a transport manager, ordered him disqualified from acting as a transport manager and that, before making any new application to act as a designated transport manager upon the expiry of the period of disqualification, Mr Hazell was required to re-take the Transport Manager CPC examination;

(c) 13 October 2021 – following a public inquiry, a Traffic Commissioner refused Carmel Coaches Ltd's application for a standard international licence authorising the use of 10 vehicles. The Commissioner's reasons referred to Mr Hazell's “repeated failure to acknowledge his previous shortcomings and lack of knowledge”;

(d) 15 July 2022, following a public inquiry, a Traffic Commissioner refused Mr Hazell's application for a standard international licence authorising the use of three vehicles. In refusing the application, the Commissioner found that “Mr Hazell had been reluctant to embrace change or to acknowledge past shortcomings”.

2. Some of those Traffic Commissioner decisions were appealed to the Upper Tribunal but none successfully.

3. On 18 October 2023, Carmel Coaches Ltd applied for a standard international operator's licence under the Public Passenger Vehicles Act 1981, to authorise the use

of a single vehicle. The application proposed that Mr Hazell would act as the operator's designated transport manager, devoting 10 hours per week to those duties.

4. The Traffic Commissioner decided to consider the application at a public inquiry, which was held on 16 February 2024. The applicant had been directed to provide any supporting documentary evidence by 29 January 2024 but the Commissioner's reasons records that, "immediately prior to the hearing I was provided with a bundle of letters, apparently prepared for a previous hearing".

5. While the application was under consideration, the Office of the Traffic Commissioner (OTC) asked Mr Hazell to set out in writing how he would ensure effective management of the business, what steps he had taken to regain his reputation and improve his ability to manage transport compliance, and what systems he had put in place to prevent a recurrence of previous regulatory breaches committed by Carmel Coaches Ltd. Mr Hazell's letter in response:

(a) gave a number of assurances about the time he would be able to devote to his responsibilities as transport manager and noted that he would have no staff to supervise. He added that, "my current application is for 1 vehicle whereas my previous licences were for 40 and 15 vehicles. This will mean a very much smaller business to manage and I will be outsourcing maintenance to an experienced and well established contractor of good reputation rather than relying on my own staff";

(b) stated that he had re-taken, and passed, the Transport Managers CPC examination, adding, "so I assume I am no longer disqualified";

(c) described attending numerous trade association meetings and training events, and observing a number of Traffic Commissioner public inquiries, in order to continue his professional development.

6. The Commissioner had no significant concerns regarding Carmel Coaches Ltd's financing, nor its proposed operating centre or vehicle maintenance arrangements. The Commissioner's real concern was the history of "serious adverse findings" against Mr Hazell and Carmel Coaches Ltd although the Commissioner also expressed the view that Mr Hazell was not "fully up to date" given his "confusion regarding the employment status of drivers".

7. Having observed that, at the end of a period of disqualification, a person does not automatically regain good repute as a transport manager (2014/050, *Andrew Harris trading as Harris of Leicester*), the Commissioner directed himself that “it is open to a Traffic Commissioner to call in [an application made by a person previously disqualified from acting as transport manager] to resolve any lingering doubts as to whether good repute...has, in fact, been restored”. In this respect, the Commissioner drew a distinction between good repute and professional competence, adding:

“By contrast at the end of a period of disqualification the effect of paragraph 7B(3)(b) of Schedule 3 to the 1981 Act ceases and the person concerned can again use their certificate of professional competence as conclusive proof that they are professionally competent.”

8. The Commissioner also expressed concern about Mr Hazell’s understanding of the concept of ‘good repute’:

(a) he seemed to think that good repute was established simply by demonstrating that he had no criminal convictions;

(b) it had not occurred to him that fitness to hold an operator’s licence is an essential element of good repute” (2013/082 *Arnold Transport Ltd*);

(c) “by continuing to insist on the good repute of Carmel Coaches since 21 September 2020, Mr Hazell appeared to downplay the relevance of his own past actions”;

(d) he maintained the stance taken at previous public inquiries, namely “insisting that he had put safety first, despite previous factual findings to the contrary”;

(e) he remained “reluctant to embrace change and had given no demonstration that he is a changed person”. While Mr Hazell denied downplaying past failures, he nevertheless maintained he had led a “very compliant if not boring lifestyle” and “thought it natural not to criticise himself”. Mr Hazell’s repeated references to a supposed ‘golden history’ of operating transport businesses had no basis in reality. Mr Hazell also said he was seeking, through the present application, to clear his name but the Commissioner considered that this was “not a proper use of the licensing system”;

(f) the failings just mentioned were apparent from Mr Hazell’s written representations but “it was his attitude on the day of the Public Inquiry which informed my assessment”:

“21. It is true to say that the longer the hearing went on, the worse Mr Hazell made his position. Whilst saying that he was deeply sorry for what had happened in the past, he gave the distinct impression that the real cause of regret was the hardship which had been caused to his business. He told me at length about the responsibility he had felt to employees and customers but hesitated when it was put to him that it was his own actions which had been to blame. He continued to view it as bad luck. He referred to having a Green OCRS but that it was the school stop leading to an S Marked Prohibition, which had caused his problems. He failed to show much appreciation that he was responsible for the compliance failings which were subsequently reported, and which formed the basis of the decisions to which I refer above. He went further and suggested that the “the cause of my problems was basically a tragic accident.” He referred to that one event turning everything upside down but over which he had no control.”

9. By reference to the Upper Tribunal's decision in 2014/50 *Andrew Harris t/a Harris of Leicester*, the Commissioner instructed himself that “an individual's character, personality, ability, and leadership qualities (as relevant to an ability to ensure compliant operation and to effectively and continuously manage transport activities) are relevant factors to be taken into account when assessing good repute”. Mr Hazell's insistence that he, and transport businesses with which he had been associated, had a blameless regulatory compliance history was the principal reason why the Commissioner refused Carmel Coaches Ltd's application for an operator's licence. The Commissioner expressed his conclusion as follows:

“Mr Hazell failed to satisfy me that he met the requirements of sections 14ZA(2)(b) for good repute and 14ZA(2)(d) for professional competence through a Transport manager capable of exercising continuous and effective management. His apparent inability to acknowledge the past failings so that he might avoid them going forward confirmed for me that I should refuse this application.”

Legislative framework

10. Section 14(1) of the Public Passenger Vehicles Act 1981 (PPVA 1981) requires a Traffic Commissioner, on an application for a standard operator's licence under that Act, to consider whether the requirements of sections 14ZA and 14ZC are satisfied. If those requirements are met, the Commissioner must grant the licence (section 14(3)).

11. The first requirement of section 14ZA is that the Commissioner is satisfied as to certain matters, including that the applicant for an operator's licence:

(a) is of good repute (as determined in accordance with paragraph 1 of Schedule 3 to the PPVA 1981) (section 14ZA(2)(b)); and

(b) is professionally competent (as determined in accordance with paragraphs 3, 4 and 6 of Schedule 3) (section 14ZA(2)(d)).

12. The second requirement of section 14ZA includes that the Commissioner is satisfied that the applicant has designated a transport manager in accordance with Article 4 of the 2009 Regulations who is of good repute (determined in accordance with paragraph 1 of Schedule 3 to the PPVA 1981) and is professionally competent (determined in accordance with paragraph 6 of Schedule 3) (section 14ZA(3)).

13. Insofar as relevant, Schedule 3 to the PPVA 1981 provides as follows:

"Good repute

1

(1) In determining whether an individual is of good repute, a traffic commissioner shall have regard to all the relevant evidence and in particular to—

(a) relevant convictions of his and of his employees and agents;

(aa) relevant fixed penalty notices issued to him and to his employees and agents; and

(b) such other information as the commissioner may have as to his previous conduct, in whatever capacity, in relation to the operation of vehicles of any description in the course of a business.

(2) In determining whether a company is of good repute, a traffic commissioner shall have regard to all the relevant evidence and in particular to—

(a) relevant convictions of the company and its officers, employees and agents;

(aa) relevant fixed penalty notices issued to the company's officers, employees and agents; and

(b) such other information as the commissioner may have as to previous conduct of—

(i) the company's officers, employees and agents in relation to the operation of vehicles of any description in the course of any business carried on by the company; and

(ii) each of the company's directors, in whatever capacity, in relation to the operation of vehicles of any description in the course of any other business.

...(3) A traffic commissioner shall determine that an individual is not of good repute if he has—

(a) more than one conviction of a serious offence [*as defined in sub-paragraph (4)*]; or

(b) been convicted of road transport offences [*as defined in sub-paragraph (5)*].

...(9) Sub-paragraph (3) above is without prejudice to the power of a traffic commissioner to determine that an individual is not of good repute for reasons other than convictions of the kind there mentioned.

(10) In this paragraph references to an individual include references to a transport manager as well as to an individual who is an applicant for, or the holder of, a PSV operator's licence.

...**Professional competence**

3

References in Part II of this Act to professional competence are to the professional competence of an individual; and a company satisfies the requirement as to professional competence if, and so long as it has a transport manager or transport managers of its road transport business who, or each of whom, is of good repute and professionally competent.

4

Where an individual is not himself professionally competent, the requirement as to professional competence shall be regarded as satisfied in relation to him if, and so long as, he has a transport manager of his road passenger transport business who is of good repute and professionally competent.

...6

(1) An individual shall be regarded as professionally competent for the purpose of Part II of this Act if, and only if,—

(a) he has demonstrated that he possesses the requisite skills by passing a written examination organised by an approved body and is the holder of a certificate to that effect issued by that body; or

(b) he is the holder of any other certificate of competence, diploma or other qualification recognised for the purposes of this paragraph by the Secretary of State.”

Grounds of appeal

14. In writing, Mr Hazell argues that the Traffic Commissioner’s finding that he/Carmel Coaches Ltd lacked good repute was flawed. The Commissioner misdirected himself in law because he failed to appreciate that an individual can only be found to lack good repute on account of relevant criminal convictions. At the hearing of this appeal, Mr Hazell further argued that the present application for an operator’s licence was dealt with unfairly because no one told him what he needs to demonstrate in order to establish good repute. He made inquiries with the Office of the Traffic Commissioner (OTC) but they rebuffed him, saying that they could not advise applicants. However, in response to a question asked by the Upper Tribunal, Mr Hazell accepted that his attention had been drawn to the Senior Traffic Commissioner’s Statutory Document No.3 (Transport Managers).

15. At the hearing of this appeal, Mr Hazell argued that it was simply wrong for the Commissioner to have found that he lacked good repute given his many years of experience in running a PSV business during which he had an excellent reputation with staff, customers and suppliers. At times, Mr Hazell also argued that previous Traffic Commissioner regulatory decisions in respect of himself and Carmel Coaches Ltd were flawed but, as the panel reminded Mr Hazell at the hearing, the only decision before the Upper Tribunal in the present proceedings was the Commissioner’s refusal to grant the operator’s licence applied for on 18 October 2023.

16. At the hearing, Mr Hazell also argued that the Commissioner failed to have proper regard to a number of references provided on the day of the public inquiry, which supported his case that he / Carmel Coaches Ltd were of good repute. The references

were not contained within the Upper Tribunal bundle, so copies were taken at the hearing.

17. Mr Hazell argues that the Commissioner wrongly found that he lacked professional competence. Since he has re-taken, and passed, the necessary transport managers' examination, the Commissioner was bound to find that he had professional competence as a transport manager.

Conclusions

Companies: good repute and professional competence

18. We shall begin our conclusions by summarising the PPVA 1981's good repute and professional competence requirements as they apply on a company's application for a standard operator's licence:

(a) the Traffic Commissioner must be satisfied that the company is of good repute and professionally competent (sections 14(1) and 14ZA(2) of PPVA 1981);

(b) the Commissioner must be satisfied that the company has designated a transport manager who is of good repute and professionally competent (sections 14(1) and 14ZA(3));

(c) in determining whether a company's designated transport manager is of good repute, the Commissioner must have regard to all relevant evidence including information as to the manager's previous conduct (paragraph 1(1) of Schedule 3 to the PPVA 1981);

(d) the Commissioner must determine that the designated transport manager is not of good repute if he has certain criminal convictions (paragraph 1(3) of Schedule 3). The PPVA expressly provides that this does not prevent the Commissioner from determining that an individual is not of good repute for reasons other than criminal convictions (paragraph 1(9));

(e) a company satisfies the requirement of professional competence if its transport manager is both professionally competent and of good repute (paragraph 3). In other words, a company cannot satisfy the requirement for professional competence by

reference to a transport manager who is professionally competent but not of good repute;

(f) a company's transport manager must be regarded as professionally competent if he holds the necessary qualification (paragraph 6(1)).

Commissioner's good repute findings

19. The argument that an individual without criminal convictions must be considered of good repute cannot succeed. This would be inconsistent with paragraph 1(9) of Schedule 3 to the PPVA 1981 which makes it clear that the absence of relevant criminal convictions does not prevent the Traffic Commissioner from determining that an individual lacks good repute.

20. We do not accept that the present application for an operator's licence was dealt with unfairly. If the OTC informed Mr Hazell that they could not advise him about what he needed to establish in order to show good repute, they were correct to do so. If an applicant requires legal or other advice, it is an applicant's responsibility to obtain it from some source other than the OTC. This is because a regulator cannot maintain its independence if it provides advice about a particular application.

21. We do not accept that the Commissioner wrongly determined that Mr Hazell (as designated transport manager) lacked good repute. Mr Hazell's argument is made by reference to assertions about his many years of operating a well-respected transport business. However, the Commissioner's determination flowed from a finding that Mr Hazell failed genuinely to acknowledge his own and Carmel Coaches Ltd's troubled regulatory history. That finding was based, in large part, on the impression made by Mr Hazell when giving oral evidence at the public inquiry before the Commissioner. We were not at the inquiry, and, in the absence of some obvious error, the Upper Tribunal should be slow to interfere with a Commissioner's findings as to the impression made by a witness. As Lord Hoffman, sitting as a member of the Judicial Committee of the House of Lords in *Biogen Inc. v. Medeva Ltd* [1997] RPC 1, said:

"45. The need for appellate caution in reversing the trial judge's evaluation of the facts is based upon much more solid grounds than professional courtesy. It is because specific findings of fact, even by the most meticulous judge, are inherently an incomplete statement of the impression which was made upon him by the primary evidence. His expressed findings are always surrounded by a

penumbra of imprecision as to emphasis, relative weight, minor qualification and nuance ... of which time and language do not permit exact expression, but which may play an important part in the judge's overall evaluation."

22. We see no obvious error in the Commissioner's findings as to the impression made by Mr Hazell at the public inquiry. Those findings cannot be considered plainly wrong, and we reject this aspect of the Appellant's case.

23. Finally, in relation to good repute, we reject the argument that the Commissioner failed properly to take into account documents provided on the day of the public inquiry hearing. Having now considered the documents, it is clear that they were summarised in paragraph 6 of the Commissioner's reasons and must, therefore, have been read by him. The documents were references produced in support of Mr Hazell's case before a 2022 public inquiry, as the Commissioner observed, and spoke to matters of general good character rather than matters of regulatory compliance. They could not realistically have made a difference to the outcome and the Commissioner was not, therefore, required to provide a lengthy explanation as to why the references did not persuade him that Mr Hazell had established his good repute.

Professional competence

24. Mr Hazell appears to be under the impression that the Commissioner found that he lacked professional competence as a transport manager. That is perhaps understandable since the reasoning used by the Commissioner to express his conclusions (see paragraph 9 above) is somewhat compressed and, to a lay reader, might convey the misleading impression that Mr Hazell lacked professional competence as a transport manager. However, we are satisfied that the Commissioner did not find that, despite Mr Hazell holding the necessary qualification, he lacked professional competence as a transport manager. That would be inconsistent with the observation made by the Commissioner about the consequences for professional competence of the expiry of a period of disqualification from acting as a transport manager (see paragraph 7 above). We think that the Commissioner's words are probably explained by the fact that a company, such as Carmel Coaches Ltd, cannot demonstrate professional competence by reference to a transport manager who is not of good repute. That is probably what the Commissioner intended to convey but inadvertently referred to Mr Hazell, rather than Carmel Coaches Ltd, as having failed to establish professional competence due to the deficiencies of its designated transport manager.

25. Alternatively, if the Commissioner mistakenly found that Mr Hazell lacked professional competence as a transport manager, that was an immaterial error. The Commissioner's finding that Mr Hazell, as designated transport manager, failed to satisfy the good repute requirement meant that the Commissioner was bound to refuse Carmel Coaches Ltd's application for a standard operator's licence under the PPVA 1981.

Outcome

26. This appeal is dismissed and the Commissioner's refusal to grant an operator's licence to Carmel Coaches Ltd stands.

Mr E Mitchell

**Authorised for issue by the Upper
Tribunal panel on 24 August 2024.**

Given under section 50 of the Public
Passenger Vehicles Act 1981.