

Neutral Citation Number: [2018] UKUT 24 (AAC)

Appeal No. T/2017/63

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

**IN AN APPEAL FROM THE DECISION OF
Simon Evans, Traffic Commissioner for the
NORTH WEST OF ENGLAND TRAFFIC AREA dated 30 August 2017**

Before:

**Her Hon. Judge J Beech, Judge of the Upper Tribunal
Leslie Milliken, Specialist Member of the Upper Tribunal
David Rawsthorn, Specialist Member of the Upper
Tribunal**

Appellant:

TANSEYS COACHES LIMITED

Attendances:

For the Appellant: None.

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

Date of hearing: 9 January 2018

Date of decision: 22 January 2018

DECISION OF THE UPPER TRIBUNAL

IT IS HEREBY ORDERED that the appeal be DISMISSED

SUBJECT MATTER:- Revocation of operator's licence as a result of loss of good
repute, financial standing, the forgery of documents submitted to the OTC, general
regulatory non-compliance, members of the operating staff holding themselves out
as directors when they were not.

CASES REFERRED TO:- Bradley Fold Travel Ltd & Peter Wright v Secretary of State for Transport (2010) EWCA Civ. 695.

REASONS FOR DECISION

1. This is an appeal from the decision of the Traffic Commissioner for the North West of England Traffic Area (“the TC”) made on 30 August 2017 when he:
 - a) Found that the good repute of the company (“Tanseys”) had been lost and that the company was no longer professionally competent;
 - b) Revoked Tanseys’ operator’s licence with effect from 23.59 on 22 September 2017 in accordance with s.17(1)(a) of the Public Passenger Vehicles Act 1981 (“the 1981 Act”);
 - c) Further revoked the operator’s licence under section 17(3)(a), (aa), (b), (c) and (e) of the 1981 Act;
 - d) Found that the good repute of David Bennett, the proposed nominated transport manager had been lost and disqualified him from acting as a transport manager indefinitely.

Background

2. The background to the appeal can be found within the papers and the TC’s written decision and is as follows: The Bennett family have been associated with a number of PSV licences in the Warrington area:
 - Warrington Coachways Limited which had its operator’s licence terminated on dissolution of the company on 8 November 2016;
 - Barry Arthur Bennett trading as Bennett’s of Warrington which had its operator’s licence revoked on 18 November 2007;
 - David Barry Bennett trading as Bennett’s Coaches whose licence was revoked on 1 March 2007;
 - Nuttall’s Coaches Limited which was sold in May 2015.
3. Tanseys began operating coaches in the late 1960’s. The licence with which this appeal is concerned was granted in August 2010. John and Janet Tansey were the directors of the company and Janet Tansey was the transport manager. The nominated operating centre was 43 Manchester Road, Woolston, Warrington and 10 vehicle discs were issued to the operator. The licence had been granted at public inquiry with six undertakings, four of which continued, including an undertaking that all authorised vehicles would have a rolling road brake test every 3 months with the results recorded and kept for at least 2 years and an undertaking that the company would undertake a random audit of at least one driver per week to ensure that they

were undertaking their daily walk round checks correctly. The findings were to be recorded and made available to staff from VOSA (as the DVSA then was) or the Office of the Traffic Commissioner (“OTC”) on request.

4. According to David Bennett (“David”), John Tansey retired as a result of ill health in 2013 and as Barry Bennett (“Barry”), the father of David, had worked for John Tansey since the mid-1970’s, John Tansey desired that Barry and David take Tanseys over. Janet Tansey remained as a director until 7 October 2014. David was appointed as a director in May 2013, resigning in June 2014, being re-appointed in October 2014 and resigning again on 12 February 2016. He was then re-appointed during the course of these proceedings on 31 July 2017. Barry has never been a director of the company and his other son, Darren Bennett (“Darren”) was a director for a limited period between 12 February and 4 April 2016. Wendy Pringle, David’s partner, was also appointed as a director on 12 February 2016 and once Darren resigned on 4 April 2016, she remained the sole director of the company during the period with which this appeal is concerned.
5. With that chronology in mind, it is of note that the licence checklist dated 30 July 2015 purports to amend the OTC’s record of directors held by showing a change of directors from Darren to Barry. As already noted, Barry has never been a director and Darren held a directorship for a two month period between February and April 2016. The same checklist incorrectly listed Barry as the nominated transport manager when no application had even been made to nominate him at that stage. Further, on 19 January 2016, Barry incorrectly signed a variation application to change the nominated operating centre to 48 Bridge Road, purporting to do so in his capacity as director.
6. On 21 July 2015, Mrs Tansey informed the OTC of her resignation as a director and transport manager. On 29th August 2015, she filed a petition for bankruptcy against David and an order was granted on 16 February 2016, four days after David’s resignation as a director. The details of the proceedings in The Gazette, describe David at that stage as being “unemployed”.
7. During the course of the public inquiry, David contended that the company vacated its nominated operating centre in January 2016, moving to Bridge Road on a temporary basis before moving to Unit 18, Melford Court, Woolston in April 2016. However, the OTC had requested confirmation that the Manchester Road operating centre was still in use long before January 2016. The request also included a request for up to date details of the company directors. The OTC has no record that the company responded to letters dated 27 October 2015, 10 December 2015 and 5 January 2016. Further letters dated 14 September, 22 September and 1 November 2016 referring to the belief that the company was in fact using Melford Court as an operating centre when no change had been notified were sent to the company. The OTC did not receive any response.
8. On 13 August 2015, the company nominated Barry as transport manager to replace Mrs Tansey. The application which was signed by Barry, inaccurately

describing himself as a company director, contained discrepancies and despite requests to see evidence of Barry's CPC documentation (letters in October 2015 and also dated 31 March and 28 June 2016), none was forthcoming and as a result, his name was not added to the licence. An application was then made on 22 July 2016 to nominate David as transport manager despite the fact that he only holds a standard national CPC qualification and therefore was unable to be nominated as transport manager on a standard international licence but then on 17 November 2016, shortly before David was sentenced to six months imprisonment (see below), an application was made to nominate Guy Morgan as transport manager. The application was in fact dated 20 April 2016 and signed by Darren in his purported capacity as company director (which he was not on that date). The TM1 form was dated 4 April 2016 and signed purportedly by Mr Morgan (his signature was forged) and presumably by Darren in his capacity as director on that date (the signature reads "D Bennett"). Then on 13 December 2016 a further TM1 form was submitted nominating Mr Morgan which bore his forged signature and also bore the purported signature of Wendy Pringle as company director. Then, on 20 January 2017, by way of an undated letter purportedly written by Wendy Pringle, the OTC was informed that as Mr Morgan had lost his original CPC documentation and was in the process of obtaining replacements, David was to be nominated as an additional transport manager. The letter enclosed a TM1 form in respect of that nomination, although it is of note that on that date, David was serving a term of imprisonment and so could not have fulfilled the functions of transport manager. The application nominating Mr Morgan did not succeed as Mr Morgan's original CPC documentation was not supplied and (as is already noted) Mr Morgan's signatures on the TM1 forms were forged.

9. The first maintenance investigation in respect of Tanseys began in July 2015 as a result of intelligence about the condition of one of Tanseys' vehicles. The investigation could not be concluded because the police were engaged in an investigation and had removed all of the company's records. VE Gauckwin commenced a fresh investigation on 6 July 2016 because of on-going concerns about the company's parking arrangements. The investigation was marked as unsatisfactory. He had initially attended Manchester Road as that remained the nominated operating centre but was told that Tanseys had vacated the premises in the latter part of 2015 (which is consistent with the suspicions of the OTC hence the letters sent to Tanseys to clarify the position beginning October 2015). VE Gauckwin then attended Unit 18 Melford Court ("Unit 18") which was not specified on the licence. He examined three vehicles and issued one immediate and one delayed prohibition. There was no evidence of vehicle records being kept prior to 2016 although some of the vehicles had been used in 2015. He spoke to David about the undertakings attached to the operator's licence. David denied any knowledge of them (David maintained in the public inquiry that the Vehicle Examiner had lied about this conversation). Prior to his investigation concluding, VE Gauckwin received a report from the police that on 4 July 2016, one of Tanseys' vehicles had been involved in an accident whilst subject to a prohibition. It later transpired that the coach, which was carrying passengers, was not insured. Once the vehicle had been inspected, it was clear that the nearside front

radius arm had fractured during the accident and that it had been the subject of an unsatisfactory repair which had affected the integrity of the component which was not designed to be repaired. Tanseys repaired its vehicles in-house but it had not been possible to interview anyone from the company about it. In relation to the management of the company, VE Gauckwin was told by both David and Darren that Barry was the CPC holder and David described himself as the General Manager.

10. VE Gauckwin attended Unit 18 unannounced on 18 July 2016 and inspected all of the available vehicles. One immediate and two delayed prohibitions were issued. He made a number of attempts to speak and meet with Barry to discuss his findings (VE Gauckwin had been told that Barry worked five days a week at Unit 18) in order to either inspect the vehicle records at Unit 18 or to have them delivered by Tanseys to him but without success with "family issues" being raised by David as an excuse. As a result, his investigation has never been concluded. However, on 12 August 2016, an "S" marked prohibition was issued at the roadside to a vehicle with an excessive fuel leakage. That same vehicle (MHZ 1556) had received an immediate prohibition on 18 July 2016 for an excessive fuel leakage although that had subsequently been cleared at re-presentation. At that stage, Tanseys' prohibition rate over the previous two years was 50% for both roadside and fleet checks.
11. At some stage in 2016 (there is no memorandum of conviction within the bundle), David was disqualified from driving for twelve months under the totting up provisions for two offences of using a mobile phone whilst driving and one offence of speeding. He told the TC that he did not go to court on the date of his sentence. Then about two months later (the details are again absent from the papers within the bundle), David was convicted of driving whilst disqualified and no insurance. He told the TC that this offence arose as a result of one of the coaches breaking down within 200 yards of the operating centre as a result of the electric stop having become stuck. The driver walked back to the operating centre and David managed to start the vehicle and decided to drive it back to the yard. He was sentenced to 4 months imprisonment suspended for 2 years. Then on 22 November 2016, David was again found to be driving whilst disqualified and without insurance. He maintained that this was the result of concerns about his father having sufficient medication. On 14 December 2016, for those two offences, he was sentenced to six months imprisonment. According to an article in the Warrington Guardian, the four month suspended sentence was activated in full and a further two months ordered to run consecutively for the November offences. Neither conviction was notified to the OTC.
12. The call up letter was issued on 26 January 2017 with all the above matters being in issue including financial standing. The hearing date was 2 March 2017 although five applications for the hearing to be adjourned to allow Wendy Pringle to attend as the sole director of the company were granted. It was also made clear by the TC that not only should Wendy Pringle attend but Darren should do so also in view of the allegations made by Mr Morgan about the identity of the person who forged his signature on the TM1 forms.

Ultimately, neither Wendy Pringle nor Darren attended either of the two hearings that took place on 5 June and 11 August 2017. Wendy Pringle relied upon a doctor's note citing unfitness to work by reason of a knee injury and anxiety and further, that she was the sole carer for her invalid mother. Darren apparently took the view that his attendance was unnecessary.

13. On 14 July 2017, one of Tanseys' vehicles received an immediate prohibition for the passenger door failing to operate/unable to close properly. A new valve was fitted and the vehicle was allowed to return to base but required an MOT to remove the prohibition. When presented, a defective service brake was identified resulting in a further prohibition.

The Public Inquiry

14. On 5 June 2017, there was the final application for an adjournment to allow Wendy Pringle to attend. That was granted but as Mr Morgan had attended to give evidence, the TC rightly decided to hear Mr Morgan to avoid any further inconvenience to him by a further attendance. David, who attended the hearing alone, would not remain in the inquiry whilst Mr Morgan gave evidence despite the fact that he was by that stage the sole director of Tanseys and that the company's case as to who had forged Mr Morgan's signature was materially different to the contents of Mr Morgan's witness statement. In deliberately absenting himself from that part of the hearing, the company was deprived of the only opportunity it had to test what Mr Morgan had stated in his witness statement.
15. The combined evidence of Guy Morgan (oral evidence and his witness statement which he confirmed was true) was that in April or May of 2016, he was approached by David, someone he had known for 20 years, with a view to Mr Morgan becoming Tanseys' transport manager. David asked him to forward copies of his CPC documentation by email which he did. An agreement could not be reached about the number of hours required of him (David being reluctant to tell him) or his hourly rate and as a result no agreement was reached. He subsequently contacted the OTC to check whether his certificates had been used by Tanseys to nominate him as transport manager but was assured that any nomination required the submission of original documentation. A driver had told Mr Morgan about the TM1 forms and he was aware that two such forms had been submitted with his forged signature (one dated 4 April 2016 with a declaration of truth signed by Darren in his capacity as director and one dated 13 December 2016 with a declaration of truth signed by Wendy Pringle in her capacity as director). He had since been told by Darren that he forged the signatures. Mr Morgan thought that Darren was trying to safeguard the business at a time when David was suffering from ill health. David had since confirmed to Mr Morgan that it was Darren who forged Mr Morgan's signature and that neither Darren nor Wendy realised the significance of the paperwork. Darren thought Mr Morgan was going to be the transport manager anyway and so signed the documents, as did Wendy. There was no bad blood between them.

16. The public inquiry reconvened on 11 August 2017. At that stage, there were a number of unresolved variation applications before the TC:
- a) To add Bridge Road as an operating centre (made on 21 January 2016);
 - b) To remove the operating centre at Manchester Road (made on 21 January 2016);
 - c) To add Unit 18 as an operating centre (made on 16 December 2016);
 - d) To nominate David Bennett as transport manager (first made on 22 July 2016);
 - e) To reduce the licence from 10 vehicles to 4 vehicles (made on 22 July 2016);
 - f) To reduce the licence from 10 vehicles to 5 vehicles (made on 8 August 2017 in substitution for (e) above).
17. David Bennett again appeared alone. The TC expressed his disappointment that Wendy Pringle and Darren Bennett had failed to attend. He was of the view that whilst Wendy Pringle did have some difficult personal circumstances, they did not excuse her attendance to answer the serious allegations made about events which occurred during the period when she was sole director of Tanseys. David Bennett had however, been given authority to speak on her behalf and he submitted a bundle of documents including a written statement from Barry admitting to the forgery of Mr Morgan's signature.
18. David Bennett maintained that Tanseys had not moved to Unit 18 until April 2016 with Bridge Road being used as a temporary measure in January 2016. All changes had been notified within 28 days although he did not produce any correspondence to confirm his assertion. As for the vehicle reduction application, none of the five vehicles proposed were in fact specified on the licence. He described the reduction as reflecting the present state of the business and the difficulty in obtaining drivers and to enable the operation to be more manageable. The intention was to operate 4 vehicles with a fifth as a spare and to continue with school contract work and private hire along with some trips and excursions. He was the business manager of the operation and was involved in the workshop. Barry would play no active part in the business but would "*potter about*" and Darren was employed as a driver but was obtaining a job elsewhere. He attributed the incidence of prohibitions to the purchase of vehicles from a dealer in Hull, all with MOTs but which were "*not good examples of their type*". He had since replaced them with newer vehicles which he thought had improved matters. He considered that the position had been contributed to by a fitter who after twenty years, had lost interest. He was David's godparent. Tanseys had employed Michael Prescott, a former FTA employee who had been in post for two and a half months and he carried out all the PMIs. Overall, David Bennett did not believe the state of the vehicles were as bad as had been portrayed. He accepted that he had not been complying with the undertaking to have quarterly rolling road brake tests but stated that brake tests using a Tapley meter were being carried out instead. He did not produce any evidence of that. He accepted that random audits of driver defect reporting were not being undertaken

weekly, but they were being done. He knew things were “*pretty bad*” but that steps had been taken to put things right.

19. As for the forgery of Mr Morgan’s signature, he said that his father had carried out this act (presumably twice) as a result of suffering from the early stages of dementia and he would have thought he was helping (he did not address the issue of how the letter received by the OTC on 20 January 2017 came about which untruthfully asserted that Mr Morgan had lost his original CPC documentation and that as a result David was being nominated as a transport manager in addition to Mr Morgan). He said that there had been a breakdown in communication and the number of family issues meant that administration had become lax.
20. As for his convictions, he described himself as not being in “*his right mind*” when he committed the second offence of driving whilst disqualified. He was concerned about his father’s medication and so chose to drive. He believed that the family had tackled the serious problems with professional help and as a result, the commission of offences by him would not happen again.
21. As for the coach accident on 4 July 2016, he described the failure to insure the coach as a “clerical error” as a result of the vehicle having previously been in the workshop for repair. The practice at the time was to remove vehicles which were under repair from the insurance policy. Everyone thought that someone else had put the vehicle back on the policy once it had been repaired. It had been without insurance for three days. The practice had now changed and the insurance company was proactive in checking the company’s insurance needs every few weeks. He accepted the evidence of the inappropriate repair to the radius arm which he maintained had taken place prior to the vehicle being purchased by Tanseys. He did not provide any evidence about the date when the vehicle had been acquired by the company and did not know why the repair had not been detected at the point of purchase or subsequently at PMIs. The vehicle had however, passed a number of MOTs with the repair in place. He had not brought the vehicle records with him to the hearing as he was required to do.
22. David Bennett gave evidence in closed session about his personal circumstances. He considered that he had suffered “*some sort of mental breakdown*” as a result of a personal tragedy. He had now come out the other end but Wendy Pringle had stepped in as a director whilst he “*buried his head in the sand*”. He asked that his condition be taken into account when considering the company’s failings. In the absence of any medical evidence, the TC concluded that David Bennett had been suffering from depression at the material time.
23. As for financial standing, the average balance on the bank statements produced was £1268. However, reliance was placed on a loan agreement dated 31 July 2015 with Zbigniew Rybiczzonek, who described himself as an “*Insurance Booker*”. The agreement which was for a period of 10 years from 31 July 2015 purported to be a loan agreement for £50,000 with interest payable on the first day of each year at an annual rate equal to the rate Mr

Rybiczonek paid from time to time under his credit agreement with his bank plus 2% and not less than 5% per annum. The agreement was silent as to the rate that Mr Rybiczonek was paying to his bank at the time of entering into the agreement.

24. Following the conclusion of the public inquiry, David sent further documentation and submissions to the TC. On 16 August 2017, David sent an email informing the TC that he had decided to replace one of the older coaches with a newer one; Mike Prescott was to continue undertaking PMI inspections and random checks on the driver defect reporting system; Tachodisc was also going to “spot check” the drivers (they were already checking the tachographs); all coaches would undergo brake testing every 8 weeks. He accepted that it was “*obvious*” that his good repute had been lost which saddened him after 20 years especially as it was due to illness. Darren was booked to sit the international CPC examinations in December 2017 and he would work for eight hours a week as the company’s transport manager. David indicated that he would like to carry on in the business, operating the new coaches along with the long serving staff. On 25 August 2017, David wrote again, indicating that Michael Prescott had agreed to act as the company’s transport manager until Darren obtained his CPC qualification.

The TC’s decision

25. In his written decision, the TC found that Mr Morgan gave balanced and credible evidence and he accepted it. The forgery was not disputed. He found that David Bennett’s evidence was significantly self-serving and unlikely to be entirely reliable. The thrust of his evidence was that whilst he had been suffering from mental health issues along with a range of family difficulties between 2015 and early 2017, significant adverse events had taken place within Tanseys when Wendy Pringle was the guiding mind of the company between 12 February 2016 and July 2017 when no nominated transport manager was in post. Yet, David Bennett’s evidence was the only evidence that the TC had heard about the period, when on his own evidence, David Bennett had been ill and not in his “*right mind*”. Tanseys had been very significantly handicapped by the decision not to arrange for Wendy Pringle to attend the hearing. The TC’s attempts to facilitate her attendance had been rebuffed.
26. The TC found:
- a) Administrative arrangements within the business were chaotic and incapable of being relied upon. Correspondence from the OTC was not responded to and where it was, copies were not retained. Different family members purported to sign company documents in roles they did not hold. The failures to manage these basic functions, lack of attention to detail and the absence of a transport manager more likely led to a failure to notify change and led to the deployment of a coach on the road on 4 July 2016 when it was not insured;
 - b) The company had not notified changes to the operating centre in a timely manner;

- c) The failure to address correspondence in a timely fashion will have contributed to the operator lacking an approved transport manager and professional competence after the departure of Mrs Tansey;
- d) There was no evidence that the company had notified the OTC of David Bennett's imprisonment and therefore his unavailability to carry out his transport manager functions;
- e) Failings and shortcomings in the in-house maintenance arrangements were likely to have led or contributed to the high rate of prohibitions which had increased to 62% over 2 years by the date of the public inquiry;
- f) The size of the fleet and its age and condition will have contributed to the failure to maintain it in a fit and serviceable condition;
- g) Whilst David Bennett was replaced as a director by Wendy Pringle, there was no "*taking up of the reins*" during the relevant period, whilst in the same period, David entered into negotiations with Mr Morgan with a view to him becoming transport manager; engaged in the purchase of replacement vehicles and it was he who took the decision to drive a coach when it had broken down (and we would add that he was also in charge of the workshop and described himself as the General Manager to VE Gauckwin).
- h) There was little evidence that Wendy Pringle played any significant role in the business during her directorship. Where there was evidence of her involvement, it included the countersigning of one of the TM1 forms and her failure to establish that what she was signing was true (and we would add, entering into correspondence with the OTC on 20 January 2017 which was misleading to say the least);
- i) It was more likely than not that a member of the Bennett family forged Mr Morgan's signature and the TC was disinclined to find that the forgery was the unknowing or guileless act it was portrayed as being. The application was submitted very close to the date that David was committed to prison;
- j) The operator failed to cooperate with VE Gauckwin in his investigation despite his preparedness to be flexible;
- k) The TC noted the prohibition rate over 5 years and 2 years and took note of the "S" marked prohibition concerning a serious fuel leak which he described as having previously been repaired;
- l) The operator had failed to retain maintenance records for 15 months in accordance with its undertakings;
- m) Despite the seriousness of the allegations, the company had chosen not to arrange the attendance of Wendy Pringle nor Darren even in the light of the allegation that it was he who had forged Mr Morgan's signature;
- n) The operator's compliance risk score was assessed as Red/Red for roadworthiness and for traffic matters.

27. The TC concluded that on any analysis, this was a bad case not only in terms of the shortcomings identified but that they ranged across so many areas of activity and involved a real threat to road safety. Whilst he sympathised with the impact of David's health condition, it was the expectation of any individual or enterprise that when difficulties were caused by personal circumstances, suitable contingency plans were made resulting in compliance. It was manifestly the case that such contingency plans did not achieve that result. Whilst David may have been removed as a director, he was not effectively

replaced and whilst he remained unwell, an application was made for him to become transport manager in July 2016 whilst he remained responsible for the workshop. The TC concluded that his confidence in the operator was seriously undermined and he could not trust the company to achieve compliance in the future.

28. In relation to David's good repute, he was satisfied that Paragraph 1(3) of Schedule 3 applied as David had been convicted of more than one serious offence (being defined as attracting a term of imprisonment in excess of 3 months and any form of custodial sentence being included). He was therefore required to determine that David was no longer of good repute as a transport manager. He nevertheless went on to consider whether, absent the mandatory provision, he would have exercised his discretion and found that David had lost his good repute. He answered that question in the affirmative. In reality, David was the guiding mind of the business and it was impossible to separate his conduct and actions from those of the operator, which the TC found to be seriously deficient. He did not consider such a finding to be disproportionate.
29. As for the repute of the company as operator, there was no evidence that Wendy Pringle played any role of significance whilst director; Barry admitted the forgery of the Mr Morgan's signature and purported to be a director of the company; Darren chose not to be present at the public inquiry, even when allegations were made against him and his presence had been requested by the TC. The TC further noted conflict in the evidence before him about Darren's future involvement in the company: at the hearing David suggested that Darren would only have a short term involvement with the operation and then following the hearing, it was proposed that he would be the transport manager once qualified. Collectively, those involved in the licence had engaged in persistent conduct adversely affecting road safety, criminal in nature and which was anti-competitive. Such conduct was entirely unbecoming of an operator. Having considered the Senior Traffic Commissioner's Statutory Document No.10, the TC was satisfied that "severe" action was warranted. Having undertaken the appropriate balancing exercise, he then asked himself the Priority Freight question (*Priority Freight 2009/225*) and answered it in the negative. He had little confidence in the operator's management and he was not persuaded that the offer of Darren or Michael Prescott as transport managers at this late stage could provide him with any comfort. In the result, the TC made the orders set out at the beginning of this judgment. He did however determine, as an act of mercy, taking account of David's personal circumstances, that the TC should refrain from disqualifying David from holding or applying for an operator's licence in any capacity. That did not mean that David would immediately be fit and suitable to hold a licence.

The Appeal

30. The appeal was listed at 10.00 on 9 January 2018. At 10.48 the administrative office received an email from Darren Bennett stating:

“Mr Darren Bennett has no intention of leaving the company should the appeal be successful and will complete his operators cpc has stated to the Traffic Commissioner (sic) (he will take exams until he passes if necessary). Mr David Bennett has no managerial role whatsoever and Mr Barry Bennett has retired”.

Darren Bennett attached to the email a further document entitled *“To whom it may concern”* in which he stated that *“personal family matters”* required him to stay at home. He indicated that he wished that the statement be taken into account and insofar as it was not a repetition of the grounds of appeal, we did so.

31. The grounds of appeal were submitted by Darren Bennett as who is now the sole director of the company. We will deal with them in turn:

a) The change of the operating centre was notified to the OTC and an email confirming this had been sent by the OTC.

We note that the TC’s findings on this issue were that the notifications in respect of the company’s operating centre were not timely (see paragraphs 7 and 16 above), not that they were not notified at all. The ground is silent as to when the changes took place and when it is asserted that the notifications took place and no evidence was produced at the public inquiry to support the company’s assertions that the changes were notified promptly when the company changed its operating centre. The ground is dismissed.

b) In respect of the nomination of Barry as transport manager in August 2015, the OTC had been informed that he held grandfather rights.

This ground fails to address the issue that the company failed to provide documentary evidence of Barry’s grandfather rights and further fails to address the fact that the application was signed by Barry as a director. The ground is dismissed.

c) The unsatisfactory repair of the radius arm which had fractured during the accident of 4 July 2016 was clearly of long standing and several DVSA officers had missed it when the vehicle had been inspected. At no point was the company asked about the repair.

We are satisfied that there is nothing in this point. The TC rightly determined that there was no evidence as to how long the vehicle had been in the possession of the company; the vehicle’s maintenance records were not produced at the hearing (as they should have been) and the unchallenged evidence of VE Gauckwin was that despite a number of attempts to meet with Barry, who he had been told was the transport manager (working full time within the company) and despite a number of requests for all vehicle records to be produced or made available for inspection, the company did not co-operate with those requests at all,

resulting in the absence of any discussion or interview with the acting transport manager or anyone in a managerial role about maintenance generally and/or the circumstances of the accident and as a result, the maintenance investigation could not be completed. Whilst it may be that DVSA officers had inspected the vehicle prior to the accident and that it had been MOT'd without the repair being identified, the TC's findings of fact are not open to criticism;

- d) The TC's findings in respect of the "S" marked prohibition in respect of an excessive fuel leak were that the same leak had previously been the subject of a prohibition and had been repaired with the prohibition lifted two days before the second fuel leak. Invoices for repairs and parts (which had not been produced to the TC) would have shown that the two leaks were from different components and that the MOT at which the first prohibition was cleared did not identify any ongoing defect.

We note that David's evidence before the TC was that in the first instance, the fuel tank had leaked and in the second, the high pressure fuel pump had failed. It is therefore clear that his evidence was that the leaks related to two different parts of the fuel system and it would appear that the TC may have misunderstood his evidence on this point. However, the significance of the prohibition history of the vehicle was that it had suffered two serious fuel leaks (which are safety critical) within a short period of time and that the second prohibition was "S" marked, not because of the previous fuel leak but because (according to the Prohibition Assessment at pg 91 of the bundle) *"the defect should have been detected at the first use/daily walk round check"*. It was considered that the defect should have been spotted in view of its description which was *"fuel leakage, which is hazardous to other road users, constant fuel leak from tank/pipe area covered by undertray, large pool left on roadway and trail as vehicle was driven"*. We further note that there was no appeal against the prohibition assessment. So, whilst it may be that the TC's comments about the leak being from the same component may have resulted from a misunderstanding of the evidence, that does not materially affect the fact that an "S" marked prohibition was issued to the vehicle which denoted a significant failure of the company's maintenance systems.

- e) In relation to the last prohibition issued on 14 July 2017 which was between the two public inquiry hearings, the second prohibition issued to the vehicle was for a defective service brake, which failed during the MOT itself and as it was a sealed part, the defect could not have been detected beforehand.

We note that David described the defect as *"it's just one of them. You can't see that it's going to fail"*. But we note again, that there was no appeal against this prohibition being issued and the relevance is that the vehicle was issued with prohibitions within two days of each other for safety critical defects.

- f) Tapley brake tests were being done by Michael Prescott and were stapled to the inspection sheets and these were shown at the public inquiry.

There is nothing in this point. It is correct to state that the TC was told about the Tapley brake tests being undertaken by Michael Prescott but David Bennett did not produce any evidence that they were being undertaken and we reject the assertion that “*these were shown at the public inquiry*”. In any event, the TC took account of the involvement of Michael Prescott in the maintenance of the company’s vehicles and accepted that the tests were being undertaken when coming to his decision and his determination that he remained concerned about trusting the company in the future was not open to criticism.

- g) David will not have any management role in the company with Michael Prescott being the transport manager undertaking the PMIs and brake tests until Darren has passed his CPC examination. Darren is now the sole director. The company had a good MOT pass rate and the TC had failed to comment on vehicles which had been checked by the DVSA which had not attracted any prohibitions.

The first part of this ground relates to a managerial decision made after the public inquiry which this Tribunal cannot take into account. The evidence before the TC was that David would continue to manage the company whilst Darren would be employed as a driver until he found employment elsewhere. Even if we could take new evidence into account (which we cannot) we agree with the TC’s assessment of Darren and with his concerns about Darren’s involvement in the management of the business in the future. As for vehicle inspections which have not resulted in prohibitions being issued, those are reflected in the percentage figures of 50% and 62% set out in the TC’s decision.

- h) Darren believes that the company should be given a chance as a result of the proposed vehicle reduction from ten to five, the involvement of Michael Prescott and Tachodisc and the purchase of newer vehicles.

We are satisfied that these matters were taken into account by the TC when he was conducting his balancing exercise and his conclusion that the adverse matters far outweighed the positive matters cannot be described as plainly wrong.

- i) Darren felt it was “*inhumane*” for the TC to expect Wendy Pringle to attend the public inquiry due to the serious health issues suffered by her mother and when Wendy Pringle was the “*only close relative nearby*”. It was unfair that the company was penalised by her failure to attend.

This point is wholly misconceived. There were five applications for adjournments made by the company to allow Wendy Pringle to attend. It was she who had voluntarily taken on the sole directorship of a company and it was she who was ultimately responsible and answerable for the company’s failings as the sole director. She had many questions to

answer and it was an act of mercy on the part of the TC that she was not disqualified as a director of a company holding an operator's licence as a result of the adverse findings relating to her period of directorship. If she had attended the public inquiry (and we find arrangements could and should have been made for her attendance to take place), the TC would no doubt have been interested in hearing her evidence about which documents within the bundle she had in fact signed. There are many signatures within the bundle purporting to be those of Wendy Pringle which are so dissimilar as to require an explanation and we highlight this aspect of the documentation being mindful that courts and tribunals should be cautious in making adverse findings relating to handwriting without the benefit of expert evidence. The signatures that have struck us as being significantly dissimilar (and the list is not exhaustive) are on pages 180, 197 and 198, 222, 252 and 306 of the bundle. The TC's approach to the issue of Wendy Pringle attending to give evidence and her role in the operation of seriously non-compliant company are not open to criticism.

32. In the additional emailed statement, Darren Bennet made the additional submissions:

- a) The Traffic Commissioner stated that the company was at a disadvantage as a result of Darren Bennett failing to attend the public inquiry. Darren did not feel that he had any allegation to answer as a result of the witness statement signed by Barry Bennett confessing to the forgery of Mr Morgan's signature. Darren Bennett felt that his reputation had been damaged enough after "*this allegation*" was printed in a leading trade magazine. As a result, the company should not have been disadvantaged by his decision.

We are satisfied that Darren Bennett fails to understand or comprehend the seriousness of his position in relation to the allegation of forgery. Mr Morgan had provided a witness statement disclosed to Tanseys stating that Darren Bennett had told him that he had forged his signature and had apologised for it. We fail to understand how, in those circumstances, Darren Bennett (or indeed David Bennett) felt that there was any need to challenge the evidence of Mr Morgan which the TC ultimately found was reliable and credible. We are further satisfied that it was inevitable that the TC would make adverse findings as a result of Darren Bennett failing to attend the public inquiry to address the allegations. There were of course issues arising out of him signing documents purporting to do so as director of the company when at the material time, he was not.

- b) The TC failed to give sufficient weight to David's ill health which the TC did not take seriously and therefore, he did not show any "*compassion*". In any event, David has been removed from any managerial role within the company.

The TC clearly did take account of David's ill-health and refrained from disqualifying him as a director as a result. The assessment that the TC made about David's role during the period when Wendy Pringle was

director was reasoned and balanced and we reject the suggestion that the TC lacked compassion. This ground of appeal is without merit.

c) The TC was biased and treated the company unfairly and incorrectly.

There is absolutely no evidence to support this contention.

33. We are satisfied that this is a bad case of lack of compliance with the regulatory regime, poor maintenance of the company vehicles and with serious wrong doing having been perpetrated by members of the Bennett family and we agree with the TC's assessment that they cannot be trusted to operate a compliant operation in the future. In the circumstances, we are satisfied that the appeal is wholly misconceived and that neither the law or the facts in this case impel us to interfere with the TC's decision as per the decision in *Bradley Fold Travel Ltd & Peter Wright v Secretary of State for Transport (2010) EWCA Civ. 695* and the appeal is dismissed.
34. By way of post script, we should add that we are satisfied that there was insufficient evidence before the TC to find that David had lost his good repute as a result of the provisions of paragraph 1(3) of Schedule 3. There was no memorandum of conviction in respect of either offence. Whilst David accepted that his first conviction for driving whilst disqualified attracted a suspended period of imprisonment of four months, it would appear from the newspaper article, that the second conviction attracted a sentence of two months consecutive to the four months, which would be insufficient for a finding of mandatory loss of repute. However, the TC's determination that he would nevertheless have found that David had lost good repute taking all of the circumstances into account is beyond criticism.



Her Honour Judge Beech
22 January 2018