



**Neutral Citation Number: [2020] UKUT 345 (AAC)**

**Appeal No. T/2020/12**

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

**IN AN APPEAL FROM THE DECISION OF  
Nick Jones, Traffic Commissioner for  
the West of England dated 19 December 2019**

**Before:**

**Her Hon. Judge J Beech, Judge of the Upper Tribunal  
Stuart James, Specialist Member of the Upper Tribunal  
Andrew Guest, Specialist Member of the Upper Tribunal**

**Appellant:**

**MICHAEL HAZELL**

**In attendance:** Mr Hazell in person

**Heard at:** Rolls Buildings, Fetter Lane, EC4A 1NL

**Date of hearing:** 6 October 2020

**Date of decision:** 8 December 2020

**DECISION OF THE UPPER TRIBUNAL**

IT IS HEREBY ORDERED that the appeal be allowed to the limited extent that the disqualification of Michael Hazell under s.28 of the Transport Act 1985 be limited to the wording of the statute, namely:

*“Michael Hazell is disqualified from holding or obtaining a PSV operator’s licence in any traffic area for an indefinite period under section 28 of the Transport Act 1985”.*

**SUBJECT MATTER:-** Failure to undertake an adequate balancing exercise; extent of Traffic Commissioners’ powers under s.28 of the Transport Act 1985; good repute; proportionality

1. **CASES REFERRED TO:-** 2009/225 Priority Freight & Paul Williams; T/2017/55 Alistair Walter; 2006/227 Fenlon; NT/2013/82 Arnold Transport & Sons Limited; T/2014/11&12 David Keith Bradley & Julie Bradley; Bradley

Fold Travel Ltd & Peter Wright v Secretary of State for Transport (2010)  
EWCA Civ. 695 .

## REASONS FOR DECISION

2. This is an appeal from the decision of the Traffic Commissioner for the West of England (“the TC”) made on 19 December 2020 when he determined that the Appellant (“Mr Hazell”) had lost his good repute as a transport manager and disqualified him from holding or applying for any position as transport manager for an indefinite period; he further disqualified him from being “a *director, shareholder, consultant, manager or employee of any entity holding an operator’s licence*” under s.28 of the Transport Act 1985 for an indefinite period.
3. The hearing before the TC was a re-hearing of a public inquiry involving CM Coaches Limited, Alistair Gray, Colin Holt, Andrew Poole and Mr Hazell and followed a successful appeal to this Tribunal (“the 2019 decision”) by CM Coaches Limited and Mr Hazell which resulted in a direction that a re-hearing take place before a different Traffic Commissioner. This present appeal is the only one to arise from that re-hearing which took place on 29 and 30 October 2019 and the subsequent determinations made by the TC in his reserved decision dated 19 December 2019 (“the re-hearing”).

### The Background

4. The background relevant to the appeal can be found in the appeal bundle, the transcript of the hearing, the written decision of the TC and the Upper Tribunal’s decisions T/2014/53/54 Carmel Coaches Limited, Anthony Grove Hazell and Michael James Hazell and T/2019/32 & T/2019/33 CM Coaches Limited and Michael Hazell (both of which should be read in conjunction with this decision).
5. The important background information leading to the T/2014/54 decision is that Mr Hazell had been a director of Carmel Coaches Limited along with his father, Anthony Hazell and his sister, Carolyn Alderton. At the same time, Mr Hazell held his own operator’s licence trading as “Hirethisbus”. He was the nominated transport manager for both licences. The licences were revoked in June 2014 and Mr Hazell and his father lost their good repute as directors and as transport managers. Both were disqualified for a period of 18 months. The regulatory action was taken as a result of serious and sustained failings in maintenance systems including prohibitions (two being “S” marked), a poor MOT pass rate, failure to adhere to the declared PMI intervals and an ineffective driver defect reporting system. Little improvement had been affected despite two unsatisfactory maintenance investigations and an adjournment of the public inquiry. In addition, Mr Hazell had been unlawfully lending vehicle discs issued to his sole trader licence to Carmel Coaches which continued despite notice being given to him that the lawfulness of his actions was in issue. In determining the appeals, the Upper Tribunal

concluded that it was a “*very bad case*” and that the facts demonstrated a “*wilful disregard of the need to ensure regulatory compliance*” on the part of Michael and Anthony Hazell and that the company was guilty of “*serious, significant and sustained abuses of the licensing system*”. The Upper Tribunal was also unimpressed with the TC’s decision to grant a sole trader licence to Ms Alderton trading as Carmel Bristol. Following the dismissal of the appeals, the TC’s order came into effect from 14 November 2014.

6. The important background information leading to the 2019 decision is that CM Coaches Limited (“CM Coaches”) was granted an operator’s licence on 9 February 2015 upon an undertaking being given that neither Mr Hazell nor Anthony Hazell have any involvement in the business. The background circumstances leading to the grant of that licence, the involvement of Mr Hazell with the licence as director and transport manager and a summary of the circumstances leading to the first public inquiry before TC Rooney including a summary of Mr Hazell’s written representations prepared by his then legal representative can be found at paragraphs 4 to 18 of the Tribunal’s 2019 decision. The summary contained in those paragraphs is generally agreed save that in paragraph 8, the Tribunal incorrectly gave the date of Mr Poole’s appointment as transport manager as early December 2017 when it should have been early December 2016 and in paragraph 10 a), the Tribunal had incorrectly quoted from VE Hasset’s report that the operating centre in Grace Road West had only “*rudimentary brake facilities*”, when it in fact read “*rudimentary break facilities*” which was a reference to a shipping container containing some upturned buckets for seats and a table. As a result of the agreement by those called to the public inquiry that those paragraphs reflected the evidence heard by TC Rooney in the first public inquiry, the TC took the view that they could be read into the record of the re-hearing.

#### The lead up to the public inquiry

7. By an email to the Office of the Traffic Commissioner (“OTC”) dated 5 September 2019, Mr Hazell contended that VE Hasset’s maintenance investigation report was flawed and was being considered by senior management. Mr Hazell suggested that it would be necessary for the TC to have all the necessary and correct data before him at the re-hearing. Further, Mr Hazell had made a complaint about TC Rooney which he maintained was relevant to the impending public inquiry and as a result, Mr Hazell contended that this complaint must be investigated and concluded before the re-hearing commenced.
8. The TC issued case management directions on 18 September 2019 which required witness statements from those who were called to the public inquiry, including Mr Hazell and skeleton arguments from CM Coaches and Mr Hazell which were to be filed within fourteen days of the order. In addition, VE Hasset was required to produce his redacted notebook within fourteen days and Mr Burch of the Confederation of Passenger Transport was asked to attend to assist the TC. Further, if the DVSA intended to submit fresh evidence, then it must be filed as soon as possible and no later than 21 days.

The TC determined that the complaint against TC Rooney was irrelevant to the issues he was required to consider as the public inquiry was to be a rehearing to be held by a different TC.

9. Regrettably, VE Hassett's notebook was not disclosed within 21 days of the directions order as the officer was on leave for three weeks in October and had reduced his hours of working to three days a week. As for a witness statement and skeleton argument from Mr Hazell, he did not file either document prior to the hearing (see below).

#### The public inquiry

10. In attendance at the hearing was VE Hassett and Vehicle Enforcement Manager ("VEM") Trott (VE Hassett's line manager); Mr Hazell, who was unrepresented; Anthony Hazell; Mr Gray, who was represented by Mr Banks of Stone King solicitors (wrongly referred to as Lyon King solicitors in the 2019 decision); Mr Holt, who was accompanied by Mr Hilditch and Mr Burch. Mr Poole failed to attend (and lost his good repute as a transport manager).
11. It is convenient at this stage to record that at the conclusion of the witness evidence, the TC was satisfied that there was no basis for coming to adverse conclusions about the use of Colin Holt's log-in details to make the changes on the VOL system on 29 December 2018 (see paragraph 12 of the 2019 decision) although strong comment was made about the use of another person's log-in details generally; there was no basis for coming to adverse conclusions about the way in which CM Coaches was acquired by Mr Gray with the assistance of Mr Burch (see paragraphs 12 to 15 of the 2019 decision); there was no basis for coming to adverse conclusions about Mr Hazell's role in the disposal of the company and the change of details on the VOL system and there was no basis for coming to adverse conclusions about the role of Mr Burch in these matters who was described by the TC as a "*respected regional CPT manager who gave credible and truthful evidence which was of very real assistance*". The TC concluded that no adverse inferences should be drawn in respect of Mr Holt's conduct as a transport manager and he found that Mr Hilditch was a credible and truthful witness.
12. At the outset of the hearing, Mr Hazell made it clear that he disagreed with all of VE Hassett's evidence and that his integrity was in issue (although later averred that he was questioning the integrity of VE Hassett on "*certain elements*" only). He submitted that the report was "*flawed in various ways*" and that it was being "*looked at by the Department of Transport*" and that he was waiting to hear the outcome. He wished to make the TC aware that there could be an issue with the TC hearing the evidence of VE Hassett if the Department wished to forensically examine the evidence and that examination resulted in a different outcome. Mr Hazell had made a complaint to the "*Maladministration Department*". However, the TC rightly indicated that it was the Traffic Commissioners who were responsible for regulating the licensing regime, not the Department for Transport and that he would proceed to make determinations on the facts which the Department may wish to take into account.

## The DVSA Evidence

13. Prior to VE Hassett giving evidence about the substance of his report, VEM Trott explained to the TC that as a result of Mr Hazell's complaint about the conduct of the DVSA investigation and the personal attack upon VE Hassett's integrity, VE Hassett had been instructed not to have any contact with Mr Hazell which extended to not reading the Tribunal's 2019 decision and whilst VEM Trott had subsequently read the decision some time prior to the rehearing, VE Hassett had not been given sight of the full content of the decision. The TC gave him an opportunity to read it.
14. VE Hassett then adopted his report. He confirmed that his maintenance investigation into CM Coaches followed an unreported, serious fire in a coach operated by the company on 6 February 2018 which was carrying school children (FJ06BNZ). He had noted that on 26 June 2015, the same vehicle had been examined at the roadside and a PG35DN had been issued for an exhaust leak on the turbo flange that the examiner considered a fire risk. The turbo had become loose again and was secured on 28 February 2017. It was a common problem with that type of vehicle and required managing. It was not being managed in this case. The vehicle fire had not been reported within 24 hours to the DVSA in accordance with the procedure set out in PSV112, which also prohibited any work being carried out on the vehicle until the DVSA had had the opportunity of examining it. When VE Hassett went to examine the vehicle, he was told that it had been reversed into by another bus at the operating centre and had been scrapped. In Mr Hazell's bundle of documents produced for the previous hearing, there was an undated letter to the central licencing office at Leeds which purported to notify the office of the fire. VE Hassett could not say whether this letter was genuine or not but in any event it was not important "*in the scheme of things*".
15. VE Hassett had previously visited 39 Marsh Green Road which was being used as an operating centre by CM Coaches and found a compound with two shipping containers but without any workshop facilities. On the day of his investigation (13<sup>th</sup> June 2018), it was locked up and no personnel were present. As VE Hassett had seen CM Coaches at the operating centre of Carmel Coaches at Northlew ("Carmel"), he visited that site with another vehicle examiner. The office staff present provided copies of PMI records for CM Coaches vehicles and confirmed that the Carmel workshop carried out maintenance for CM Coaches. At this point in VE Hassett's evidence, Mr Hazell interrupted stating that the workshop at Carmel was in fact owned by his father and that when the mechanic at Carmel carried out maintenance on the CM Coaches vehicles, he was employed by CM Coaches. Mr Hazell maintained that he had a contract of employment in respect of the fitter but he did not have it with him. VE Hassett however averred that when he spoke to the mechanic at Carmel (Steve) who was working on CM Coaches vehicles at the time, he stated that he was working for Carmel. Further, the MOT certificates for vehicles operated by CM Coaches were kept at Carmel. Whilst VE Hassett was at the Carmel operating centre, he asked two colleagues to

visit Marsh Green Road to obtain any maintenance records which were kept there but there was no one on site.

16. VE Hassett attended the office at Marsh Green Road on 2 July 2018 and spoke to Clive, a fitter employed by CM Coaches who used to work for Carmel. He gave VE Hassett the available maintenance records and VE Hassett then used a sheet of paper to log all of the maintenance records for seven vehicles and scanned all of the records. He also checked the VOR sheets and noticed that there were gaps between PMIs of up to 14 weeks when the stated interval on the operator's licence was 6 weeks. The age profile of the vehicles was 1998 to 2008. At this point, the TC noted that in his PG13F&G response to the investigation, Mr Hazell had averred that there had been some MOT tests during the stretched interval periods (which are no substitute for a PMI) to which Mr Hazell agreed stating that on each occasion, the vehicles had in fact had a PMI inspection prior to the MOT tests. He was unable to produce the paperwork confirming the three PMI inspections that he relied upon and VE Hassett was unable to say whether those inspections (if they had taken place) would have resulted in compliance with the six-weekly interval without re-examining the records.
17. Whilst at the Marsh Green Road office, VE Hassett noticed a brake decelerometer (or tapley meter). He asked to see it and noted that the calibration certificate had expired in May 2018. Further, the signing fitters on the brake test slips which were attached to some of the PMI sheets included Clive and Steve, however Steve was based at Carmel in Northlew and the meter was in Exeter. VE Hassett concluded that either the meter was physically transported to Northlew each time it was used during PMIs or the inspections were carried out in Exeter where there were no facilities.
18. VE Hassett then read out the following from his report:

*"The very odd thing with the PMI sheets is that there are 2 sets in play, a white set usually filled out days before a "Tachodisc" blue set is used with often defects differing between inspections, for instance, vehicle index number FA07XEH was inspected on a white sheet on 7/3/18 and showed 18 defects yet vehicle was inspected again using a blue set on 9/3/18 with only a defective brake chamber, mileage was the same. No brake test on either inspection. No brake record after brake repairs".*

At this point, Mr Hazell interjected stating that he was not sure whether he was going to dispute this evidence. He would need to check to see whether the mileage was the same on both sheets. He accepted that he had retained the maintenance records used by VE Hassett to prepare his report and that he was on notice since March 2019 that this point was going to be made. He averred that he would *"verify the position later"*.

19. VE Hassett then moved on to other records for the same vehicle (FA07XEH). The vehicle was reported as VOR on 15 December 2017 for a collision yet the next PMI sheet which was dated 7 March 2018 had a comment on it *"No off mileage as the dash was blown"*. There was a defect note dated four days

earlier than a VOR note showing 723552kms and on the next PMI the mileage was showing as 724433km, a distance of 1119kms. This vehicle averaged a monthly mileage of 3015km so 1119kms in less than 4 days was a lot. There were no recorded brake tests from the last PMI on 30 November 2017 and none on a PMI sheet dated 8 June 2018. The vehicle also had brake work undertaken on 9 March 2018 and no brake efficiency checks were undertaken before the vehicle went back into service. The longest PMI interval appeared to be seven weeks. It followed that between 30 November 2017 and 8 June 2018 (at least, as there was no brake testing on that occasion either) there were no recorded brake tests. At this point Mr Hazell interjected stating that during part of late 2017 there were issues with the Bluetooth connectivity with the Tapley meter. The TC pointed out that this did not prevent the fitters making a manual record of the results on the PMI sheet. Mr Hazell then averred that he believed that the brake tests had been carried out but not recorded. He continued "*we intend to do about four rolling road brake tests on a vehicle per year*" but he could not produce either tapley meter readings or rolling road test readings. He would try to produce evidence of the latter. He accepted that he had missed the fact that the calibration certificate for the tapley meter had expired but made immediate plans to put it right once he had been informed. He then referred to an invoice he had produced at the first public inquiry for the Ministry of Defence to explain the missing mileage referred to by VE Hassett. When the TC pointed out that he did not have a copy of that invoice, Mr Hassett stated "*.. I've probably got it somewhere*".

20. VEM Trott then reminded the TC of the contents of paragraph 40 of the 2019 decision, where the Upper Tribunal noted that the evidence of VEM Trott had been at the first public inquiry that whilst he was examining the PMI records which Mr Hazell had brought with him to the hearing, VEM Trott had found a PMI sheet dated 12 August 2018. His evidence had been that this was the first record which showed that a tapley meter had been used for brake testing. Written on the PMI sheet were the words "*calibration expired on brake tester*" which undermined Mr Hazell's averment that he had taken immediate action upon learning about the expiry of the certificate.
21. The TC continued to go through VE Hassett's report: Vehicle FN52 HOR had a note on the file dated 15 January 2018 of "*pull brakes*". There was another note dated 20 March "*brakes pull to left*". On a white PMI sheet dated 11 May 2018 there was a note "*brakes need looking at*" with no note that any action had been taken yet on the blue PMI sheet dated 16 May 2018 and with an additional 395 kms on the clock, there was no mention of defects or brake repairs. VE Hassett confirmed that as a result, there was no evidence that repairs had taken place and because of the two sets of PMI records, he did not know what to believe. Mr Hazell then asserted that he had evidence to show that rolling brake tests had taken place (but not produced by him) and both Vehicle Examiners confirmed that the existence of two different sets of PMI records was evidence that the blue set were meant to be seen by the DVSA and the TC, whilst the white set actually painted the true picture. It followed that the blue records were false. Mr Hazell then pointed out that on many occasions, the white PMI sheets were stapled to the blue ones and that they were kept in the vehicle folders. VEM Trott informed the TC that in 30

years in the industry, he had never seen two sets of PMI sheets. Mr Hazell denied that any falsification had taken place.

22. The TC continued with VE Hassett's report: a PMI sheet for vehicle RJ02 GJO dated 18 January 2017 recorded that two wheel nuts had sheered but there was no driver defect report to that effect. The vehicle was then VOR'd on 11 March 2017 for oil leaks with the mileage recorded as 553797kms. The vehicle was signed back into service apparently on 27 July 2017 with mileage of 554012kms. However, other records showed that the vehicle had been VOR'd again on 15 March 2017 with mileage recorded as 2kms less than on 11 March 2017 for smoking and returned to service on 27 June 2017 with mileage of 553884kms. Again, VE Hassett did not know what to believe. The vehicle could not be off the road and yet on it at the same time and the mileages showed discrepancies. Moreover, the vehicle was listed as VOR'd again between 6 September 2017 to 16 September 2017 whilst the records showed that it had been on loan to Stamps Coaches. No written agreement to that effect had been seen by VE Hassett. Mr Hazell then averred that there was such an agreement but confirmed he had not produced it.
23. The next vehicle was WD02NKA which had a blue PMI sheet showing that new track rod ends had been fitted on 1 June 2018 although there was no record of the IM number on the PMI sheet and no defect recorded on page one. Further, there was no roadworthiness declaration or a recorded brake test. A discussion then took place about whether the white sheets were always filled in before the blue ones and whether they contained a declaration of roadworthiness. Anthony Hazell then interjected stating "*obviously our friends from the DVSA are confused and I'd just like to explain to them how it works*". Mr Hazell was told that he could give evidence in due course. VE Hassett was able to say that on this occasion, there was only one PMI record for 1 June 2018.
24. VE Hassett then dealt with vehicle CV02OWZ: the vehicle commenced its PMI on 20 February 2018 and was signed out on 23 February 2018 with mileage of 836316. However, there was a driver defect report for a defective emergency buzzer dated 21 February 2018 with mileage of 836348. It did however have a rolling brake test ("RBT") as part of its PMI. It was signed back into service by Anthony Hazell. The question that VE Hassett required an answer to was why the vehicle was operated in the middle of a PMI? The question had not been answered. Mr Hazell then interrupted to aver that the vehicle would not have been used during the course of a PMI and the dates were possibly wrong. The mileage travelled between the start and the finish of the PMI was consistent with the vehicle travelling to BVS for a RBT. He maintained that he had given this explanation to VE Hassett although Mr Hazell accepted "*sloppy record keeping .. or its' unexplained*".
25. VE Hassett continued with the same vehicle: following the PMI of 20 February 2018, there was a "*scribbled note*" on the file dated 26 March 2018 with a question mark against the date and without a mileage recording that the vehicle was VOR'd for fuel problems but the next PMI was not until 23 May 2018 and 1221 kms had been driven since a defect note dated 27<sup>th</sup> February



2018 with no reference to any first use check after the VOR. This resulted in a 14 week gap between inspections. The TC asked Mr Hazell whether he accepted that evidence to which Mr Hazell responded "*I am not entirely sure*". The TC then reminded him again of the directions he had given to produce a statement which should have contained the challenges he made to evidence of VE Hassett". Mr Hazell responded "*Mmm-hmm*". When asked whether he had evidence to challenge the account given by VE Hassett, Mr Hazell did not respond. He then volunteered that he accepted what was said but as for the 14 week gap between PMIs "*it's almost as if then he hasn't taken into consideration that .. the vehicle was off road*". He accepted however that if a vehicle was VOR'd there had to be a first use check which is the same as a PMI. Asked whether he had evidence of such a check, Mr Hazell stated "*I hopefully can find something*". The TC reminded him again that he had been aware of the evidence for a long time.

26. The TC then took VE Hassett through his report concerning vehicle FJ06BNZ: the vehicle was VOR'd on 17 June 2017 at 492310kms seven weeks after the previous PMI and the VOR recorded that the vehicle was with BVS for non-starting and an MOT. BVS conducted a PMI on 31 July 2017 with mileage of 492518kms, a difference of 207kms from the VOR mileage; the vehicle had travelled on the road without a first use inspection. The VOR contained a false statement that it was inspected at 492310kms on 2 August 2017 and was signed off to this effect on the report. It was not 207kms from the operating centre to BVS. When asked by the TC whether he had evidence to contradict the account of VE Hassett, Mr Hazell replied "*No, not with me*". The TC continued with the same vehicle: it had been previously examined on 8 May 2017 with no defects recorded and a brake test at BVS yet when a pre-MOT check was conducted by BVS on 31 May 2017, more than 22 defects were recorded including three which would have warranted a PG9 at the roadside. It was also reported that the fire extinguisher was not serviced and was of the wrong type. Twelve of the defects should have been reported by the drivers previously. When asked by the TC whether he had evidence to contradict VE Hassett's account, Mr Hazell replied "*No, I haven't seen what the twelve defects were*". The TC pointed out that these were his records and it was "*within his gift*" to do so.
27. Vehicle WK07AOJ: had both blue and white PMI sheets. There was no brake test record after brake work on 4 June 2018 and no driver defect reports for engine stop, position lamps, door buzzer or a defective seatbelt. There was a nine week gap between inspections. Mr Hazell was asked whether he had an explanation for the evidence to which he initially did not respond but then volunteered that he believed that the nine-week gap was probably when there had been an MOT although when asked whether he had evidence of the MOT, he responded "*I can find evidence yeah*". He was asked why he had not produced the evidence; he did not reply. He did however accept that an MOT is not a substitute for a PMI.
28. Vehicle YN08ZNP was checked on a white PMI sheet on 9 March 2018 at 135243km and then checked on a blue PMI sheet on the same day with 50km extra mileage recorded. The same vehicle was checked on 24 April 2018 on

a white PMI sheet at 137731km and again on the same day on a blue sheet with a mileage of 137781kms, a difference of 50kms. On that day, the white sheet reported an inoperative passenger door and an inoperative emergency door warning but the sheet was not signed off and no brake test had taken place. The blue sheet only recorded an air leak on an offside rear air tank with a note that a part had been ordered but with no evidence that it had then been fitted. The vehicle was signed off as roadworthy by Anthony Hazell without a brake test. There was 9 week gap between inspections on 4 January and 9 March 2018. VE Hassett's concern was that the vehicle was being partially checked and then being used to do a school run after which the PMI was completed. He was also concerned about the discrepancy between the defects recorded on the two sheets. Mr Hazell volunteered that the distance between the Exeter site and the Carmel site was about 50kms and that would explain the mileage. He could not provide evidence of a brake test having taken place.

29. The TC then referred to VE Hassett's report which noted that defects were found at some PMIs that had not been reported by the drivers and so it followed the driver defect reporting was unsatisfactory. Further, some VOR notes did not record mileage when a vehicle was taken off the road nor was there a clear back in service inspection date which is why he recorded that there were maintenance gaps of up to 14 weeks and the VOR notices could not be verified as reflecting the true time the vehicle was off road for because of the missing mileage records. All of the vehicles that VE Hassett had seen still had the incorrect legal lettering on their sides and this would attract an Offence Rectification Notice if the vehicles were examined by a Traffic Examiner. He had photographed three vehicles on 14 November 2018 in Okehampton with incorrect legal lettering even though he had spoken to Steve the fitter in Northlew about the issue in July 2018. Mr Hazell averred that he had not seen the photographs referred to despite having asked for "*all the raw data*" relied upon by VE Hassett. He was not aware that the issue had been raised with the fitter and the problem could have been easily remedied because they kept legal lettering in stock.
30. VE Hassett then dealt with his findings arising out of the fleet inspection: he inspected three vehicles and issued 3 advisory notices mostly for first aid kits and out of date fire extinguishers. There was also a tachograph displaying a fault and a suspension warning lamp illuminated with no driver defect reports showing that these defects had been reported. He confirmed that there were no maintenance facilities at the operating centre and that maintenance was carried out at the Carmel operating centre and with some carried out at BVS Okehampton. However, there were no maintenance contracts on file. There was a wall planner. VE Hassett recorded that the MOT failure rate in the five years prior to his investigation was 44% although the TC highlighted that there were difficulties in providing accurate information on the failure rate because PSV vehicles were not specified on PSV licences unlike HGV vehicles.
31. VE Hassett had further recorded that the five year PG9 rate was 32% (national rate being 17%) and a two year PG9 rate of 36% (national 16%). Three PG9s recorded six brake defects. However, there had been no

roadside encounters since 15 December 2017. He confirmed that Clive the fitter in Exeter had co-operated with him. He continued: *“it was noted whilst I was at both the Carmel office Northlew and the CM office Exeter, that enquiries were coming into both offices for all three operators CM, Carmel and Carmel Bristol, I was told that the large computer server on the CM office wall linked/networked all three operators, referred to by staff at both Carmel, and CM as the Exeter, Northlew and Bristol depots”*. It was Clive who told VE Hassett about the link between the operators. Further, whilst at the Carmel office, VE Hassett heard an operator saying *“Oh no, you’ll want our Exeter branch. You’ll want our Bristol branch for that”*. The TC expressed *“very real concerns”* that the three business were being operated as one. VE Hassett was similarly concerned.

32. VE Hassett was asked to comment upon the copy of a gate check dated May 2019 which Mr Hazell had produced at the last hearing which stated that four vehicles had been checked a week. VE Hassett told the TC that this was the first record of this type that he had seen from Mr Hazell. He did not understand why the records were not with the records he had been shown. Mr Hazell volunteered that the checks were in a separate compliance folder.

33. In the Conclusion section of his report, VE Hassett repeated his comments and concerns about CM Coaches having two sets of PMI records. He recorded:

*“I clearly remember my last encounter with the Hazell family some years ago. They remarked that they were going to stop putting defects on the records if it was going to result in trouble”*.

VE Hassett clarified that the comment was made by Anthony Hazell in 2014 and in answer to Mr Hazell’s assertion that the comment *“could be made up”*, VE Hassett responded *“but I don’t make things up”*.

34. VE Hassett then went through his redacted notebook. In addition to the matters set out in his report, VE Hassett had recorded:

- 17 April 2018: a Driving Examiner had told him that he had to abort a driving test with a CM Coaches vehicle as there was a red warning light on the dash which had been covered up with a laminated route card
- The advisory notices issued on the date of the fleet inspection would have been automatically sent to the operating centre by Swansea on that day as soon as they had been logged on the DVSA system. Mr Hazell did not however receive the notices (a matter complained about by Mr Hazell) because the address of the operating centre had been changed by Mr Hazell without informing the Central Licensing Office. Further copies were sent some months later
- By 24 September 2018, he had been *“bombarded with FOI requests”* from Mr Hazell which VE Hassett described as *“time wasting tactics”*.

35. At the conclusion of the notebook reading, the TC reminded Mr Hazell that the notebook had been disclosed because Mr Hazell had asked to see it as part

of his attack on the integrity of the Vehicle Examiner. The TC asked Mr Hazell to state his grounds for the attack that he had made. Mr Hazell referred to the reference made by VE Hassett during the previous hearing to vehicle SIG 8434 which had been included in VE Hassett's calculation for the MOT fail rate. At this point in the proceedings, VE Hassett and VEM Trott informed the TC that SIG 8434 had previously been registered as T184 AUA and operated by CM Coaches and that on 9 February 2017, whilst still registered to CM Coaches, it had been issued with a PG9 for a defective indicator. VE Hassett produced the prohibition notice which had been issued during a school check when the vehicle was being driven by Victor Manuel Guerrero. The vehicle was then referred for an MOT test and the PG9 was removed on 16 February 2017. The vehicle was transferred to Hill Service Limited on 8 August 2017 and then on 9 February 2018, the vehicle had failed an MOT test for a defective service brake. Mr Hazell accepted that he was aware of registration T184 AUA but initially averred that he could not say whether the vehicle was being operated by CM Coaches at the time of the PG9 being issued on 9 February 2017. He accepted that CM Coaches had employed the driver. Later, he accepted that the vehicle was being operated by CM Coaches when the PG9 was issued and he averred that VE Hassett had included the MOT failure on 9 February 2018 in his calculations "*trying to bunch it on to me to make my record worse*". When asked whether he was asserting that VE Hassett had included the MOT failure deliberately, Mr Hazell responded "*I'm saying I don't know*". The issue was further discussed. VE Hassett explained that the "*list*" he had referred to in the previous hearing (see paragraph 29 of the 2019 decision) was in fact that taken from the VOL system. He believed that he had accepted that the vehicle had changed hands prior to 9 February 2018 at the previous hearing. Mr Hazell averred that he had been "*fair and justified*" in challenging the integrity of VE Hassett as a result of this issue.

36. The TC asked Mr Hazell to set out the other issues which caused him to question VE Hassett's integrity. He relied on VE Hassett's findings that the maintenance of the company's vehicles was not being undertaken "*in house*" as declared. Mr Hazell averred that the arrangement he had with Carmel/Steve was one which had been approved by the Confederation of Passenger Transport during a help-line discussion and that constituted professional advice (Mr Burch denied that it was he who had given such advice as he would have told Mr Hazell that he needed some form of contract). Mr Hazell averred that Steve, the fitter at Carmel, was in fact self-employed and when he was working on CM Coaches vehicles, he was working for Mr Hazell and was being paid separately. It followed, that a maintenance contract was not required (this is at variance with Mr Hazell's assertion set out in paragraph 15 above that he did have such a contract). When asked whether he had evidence of invoices paid by Mr Hazell for Steve's work, he responded "*I have somewhere*". There were no further matters raised by Mr Hazell which he contended supported his attack upon VE Hassett's integrity.
37. Mr Hazell then cross examined VE Hassett:

- a) VE Hassett agreed to produce the photographs taken by him on 14 November 2018 recording the incorrect legal lettering on three of CM Coaches vehicles (it is unclear whether he in fact did so although ultimately, the TC did not come to any determination on the issue);
  - b) He agreed that he may have been shown evidence of Mr Hazell having attended a two-day transport manager refresher course;
  - c) The reason for the fleet check taking four hours was that whilst VE Hassett and his colleague had only checked three vehicles, they also checked the records in the office as well (which included scanning them all);
  - d) It was incorrect to describe the fleet check as “*not disappointing*” and there were occasions when no PG9s were issued during a fleet check but the investigation was still marked as “*unsatisfactory*”;
  - e) VE Hassett had described the parking arrangements as “*mostly satisfactory*” as the size of the operating centre for ten vehicles meant that parking was “*a bit tight*” as illustrated by a collision within the yard (see paragraph 14 above);
  - f) The OCRS score: whilst Mr Hazell had calculated an MOT fail rate based on this score, VE Hassett, (along with VEM Trott and the TC) considered this approach to be misconceived because the OCRS was based solely upon encounters, prohibitions and straightforward MOT passes or failures. The score did not take account of instances where a repair was required at the testing station before a pass could be achieved. They were classified as a PRS. Further the OCRS score was an internal scoring system to assist the DVSA with risk only and should not be used to calculate MOT failure rates. The 44% MOT failure rate quoted in VE Hassett’s report was calculated over the previous five years. Mr Hazell requested that VE Hassett provide the MOT failure rate for the period when he was the transport manager of the company. This was not done as there was insufficient time.
38. At the outset of the second day of the hearing, VEM Trott informed the TC that he had wrongly challenged the manner in which Mr Hazell and his father recorded brake test results using the Bowmonk/Tapley meter during the course of discussions on the subject on the previous day. Mr Hazell informed the TC that he had been so concerned about the assertion that the brakes on the vehicle in question may not be “*legal*” that he had taken the vehicle off the road the night before and had put the vehicle through a rolling road brake test prior to the public inquiry resuming.
39. Mr Holt then gave evidence. He had prepared a statement which was read out. The only matter of relevance to this appeal was that he took issue with Mr Hazell’s account as to how Mr Hazell came to have Mr Holt’s VOL log in details (which the TC advised did not go to a matter of integrity). Rather than cross-examining Mr Holt as he was invited to do, Mr Hazell instead explained what he had meant when he had told Mr Holt in the telephone call referred to in paragraph 7 of the 2019 decision about Mr Holt’s resignation making “*things difficult*” for him and his father. What he had meant was that he had a vague idea to do something else with another business.

40. The TC then turned to Mr Hilditch and read out paragraph 6 of the 2019 decision. Mr Hilditch clarified the evidence he had given at the previous hearing that CM Coaches had become a “*zombie operation, existing simply to pay wages ..*”. What he had meant was that a lot of coach companies were reliant on county council work which paid at a minimum level and therefore, successful companies had to find other things to do. He and Mr Holt wished to take on some services dropped by Stagecoach and to change the profile of the fleet to include DDA compliant coaches. The comment was not meant to be a criticism of Mr Hazell. VE Hassett confirmed that at the time that Mr Holt and Mr Hilditch resigned from CM Coaches, the company was not considered to be non-compliant and Mr Hilditch also confirmed that at the time, the company had its own workshops with three bays and all of the necessary maintenance equipment and facilities save for a RBT. The PMI frequency was five weeks but the vehicles were inspected on a four weekly regime. As at December 2016, the company’s maintenance was in extremely good order and nothing like how it was found to be when VE Hassett investigated in June 2018.
41. The next relevant witness was Anthony Hazell. Following a short summary of his long involvement in coach operation, he went on:

*“so what happened is that when my firm Carmel Coaches took over the maintenance of CM Coaches because they’d dispensed with their workshop and had no facilities for underneath inspection .. we came to an arrangement where we would let CM Coaches use our premises for their underneath inspections .. assisted by a contractor who worked for us and who was quite agreeable to working for CM and helping them with this maintenance work. So basically what we arranged to do is Clive, a CM employee in Exeter, would inspect the top side of the vehicles. He would check all the seat belts, the lights, wheel nuts, and as much as he could without the use of a pit. He then would fill out an inspection form as far as he possibly could ... it was the white form. No significance in that .. he obviously couldn’t complete all the sections of this form because some of them related to items underneath the vehicle ... After he’d done that the vehicle would be transferred to my workshops at Northlew where we have very adequate inspection facilities and equipment. Steve .. would check the vehicle over again and concentrate on the underside. He would then, on completion of his inspection, complete an inspection form which he used as a tachograph disk with a blue copy .. So the vehicle was then adequately inspected and normally it would be Steve that did the brake test, although sometimes if the Bowmonk machine was at Exeter, Clive was quite capable of doing it, but I think more often than not it was done in Northlew. An advantage of this scheme is that two people inspected the same vehicle so we had two fresh sets of eyes looking at it and it did encourage a little bit of competition because Clive would say to me, “I’ve gotta write everything down on this form. I don’t want Steve to find out .. find anything I’ve missed”. Now when the vehicle came to Northlew and Steve would look at it he’s day to me, “Oh, I can bet I can find something Clive’s missed. I’m gonna have a good look see what I can find”. So with two sets of eyes giving this vehicle a vigorous inspection the result was that very few, in fact seldom, was a defect ever left undetected. I consider this good practice.*

*Although Mr Trott says he's never heard of any such procedure in all his days, well he's only a youngster. There's plenty of time for him to find out things like this. So I just want to get his confirmation now and Mr Hassett's that they are satisfied with this procedure and in no way was any falsifying of documents (sic)".*

42. The TC indicated that he was not satisfied with the procedure as described. The Guide to Maintaining Roadworthiness set out a procedure whereby there was one inspection record which recorded who inspected the vehicle, when it was inspected, with full details of the inspection and with rectifications shown. One of the problems found by VE Hassett was that defects were identified but no rectification was shown. Moreover, the TC (and the vehicle examiners) had never come across a split system of inspections before. The TC described the system as "*horribly wrong*" and was of the view that it demonstrated a "*level of incompetence which is staggering*".
43. Anthony Hazell told the TC that following TC Rooney's "*advice*" the split system of inspections had stopped. Mr Michael Hazell then intervened saying "*I would like to suppress the competition element. I don't think that it was a case of they're competing with each other (sic)*". Anthony Hazell then revised his choice of words to "*gentle pressure*". He went on:

*".. I applaud [the DVSA officers] for the energy and enthusiasm they've devoted to this Inquiry. We heard that two men visited Northlew and spent five hours looking at three coaches. That is ten-man hours to look at three coaches. It must've been a very intensive investigation. No prohibitions were issued although apparently three months later an advisory defect notice for a first aid kit was issued. Following that Mr Hassett spent day after day scanning files so obviously they've put a lot of effort into this. What surprises me .. today ... is I've heard no mention of wheel loss, no mention of prohibitions for bald tyres, no "S" marked prohibitions issued at MOT. I've heard no complaints about prosecutions for vehicles being used without tax, MOT or insurance ... So all I have heard today are complaints about inspection forms, first aid kits, fire extinguishers, a couple of references to MOTs. .. I do think they are serious issues but they're not the major issues that commonly occur at public inquiries .. I wouldn't class CM Coaches as seriously non-compliant."*

Anthony Hazell considered that he and his son had been very harshly treated in 2014 when they had been disqualified as directors and transport managers. He wanted to put "*a good word in*" for his son. It was very difficult to encourage young people into the passenger transport industry:

*"I feel again he's made, like everybody he's made a few mistakes. He's got into the habit of falling out with DVSA basically because he's had the courage to put his head above the parapet and challenge them on certain occasions. Sometimes he may have been right. Sometimes not so right, but you did say earlier on that you encouraged operators to challenge DVSA PG9 decisions .. I think perhaps Michael has gone a bit too far. Nobody wants to cause mental health problems to any DVSA officer .. but in the same way as operators*

*when we've .. [been] harassed by officials it causes stress and mental health disorders .. I wish we could have greater cooperation with the DVSA and I wish they were more helpful to us and they would find that we're honest, open, transparent family .. and we don't want to fall out with anybody and we don't want to be called to public inquiries ..".*

44. Mr Michael Hazell then gave evidence. Now that he had heard the explanation for the MOT failure on 9 February 2018 being incorrectly included in VE Hasset's calculations, he was able to *"step back from making an allegation of integrity because it's been cleared up"*. He now accepted that a mistake had been made. Mr Hazell then returned to the issue of the MOT failure rate and his own calculations for the period during which he was the transport manager using the OCRS. His conclusion was that the MOT pass rate during that time was 70% which was something to be proud of. He then went through various OCRS scores between 18 October 2017 and 17 September 2018. Mr Hazell indicated that he could show this evidence to the TC (but did not). He contended that by the time he had stepped down from being transport manager, the OCRS scores were green/green although he accepted that he could not escape the overall picture of compliance *"which was poisoned .. in the period before I took control"*.
45. VEM Trott was asked to comment on Mr Hazell's use of the OCRS scores. He described the OCRS as a targeting tool for the DVSA; it indicated risk alone and the scores depended upon the particular issues that were being concentrated on at any given time for example, overloading or insecure loads. The appropriate data to look at when considering whether a PSV operator is compliant is the roadside encounter history and the MOT pass rate. In fact, there had not been any roadside encounters with CM Coaches vehicles since December 2017.
46. Mr Hazell accepted that OCRS was *"not without its faults"* but operators were encouraged to monitor the scores. His analysis showed that there had been a marked improvement in maintenance and that the issues raised by VE Hasset's investigation was *"more lack of paperwork than .. lack of maintenance being carried out"*. There was no *"laissez-faire attitude to maintenance"*. In an ideal world he would have been able to extract from the PGF&G the total number of vehicles checked, the annual test fail rate during his time as transport manager. VEM Trott reminded Mr Hazell that he had all of the data necessary to be able to undertake that exercise in the form of his own maintenance records.
47. He accepted his father's description of the split maintenance system which had been devised and described it as a joint effort. The white sheets had originally been used when CM Coaches had its own maintenance facilities and their use continued but the blue sheets were *"the official sheet"* which was signed off. Whilst the blue sheets did not record all the defects found and rectifications undertaken, the white sheets were stapled to them (although it is of note that the white sheets did not show rectifications either). He accepted that *"occasionally"* the two sets of inspections were on different dates. This



prompted the TC to exclaim “*It is a bizarre chaotic system which you appear to have developed ..*”.

48. Mr Hazell returned again to the OCRS and what could be extrapolated from them. The TC advised him that for the purposes Mr Hazell wished to use them, they were “*virtually meaningless*” and “*irrelevant*”. He suggested that Mr Hazell concentrate on the issues arising out of the split maintenance system. Mr Hazell submitted that one of the qualities of a transport manager was the ability to learn. Following the previous public inquiry, the split maintenance system had been abandoned. As for other positive features, he reminded the TC that he also held a licence in the name of Coach Hire Services with one vehicle authorised. No maintenance issues had been identified. Mr Hazell had produced one PMI sheet for the vehicle operated on that licence for VEM Trott to consider and in answer to questions from Mr Hazell, VEM Trott averred that one record was insufficient for him to form any view of the maintenance of the vehicle. Mr Hazell then asked the TC to consider the contents of the witness statement he had produced and that there had not been any serious maintenance failings identified. His conduct throughout had been “*open and honest*” and he reminded the TC that he had removed a vehicle from operation the evening before when VEM Trott had misinterpreted the readings from the Tapley meter in respect of that vehicle and arranged for a RBT. He considered that it was open for the TC to find that Mr Hazell was an operator who could be trusted and that whilst he had made mistakes, he had learned from them. Finally, whilst his reputation as transport manager had been restored by virtue of the Upper Tribunal decision in March 2019, he had not gone on to apply to be a nominated transport manager for any other licence as he had wished to know the outcome of the rehearing. He had therefore served the equivalent of a ten-month disqualification period.

49. Having concluded the evidence, the TC wished to make clear for the benefit of VE Hassett that he did not doubt his integrity, honesty and professionalism. Whilst he had not enquired of VE Hassett about how the allegations made by Mr Hazell had affected him, the TC took notice of the fact that being subject to such allegations would have been stressful, particularly for a public official performing safety checks over many years. If it had not been stressful, the TC would “*be amazed*”. VE Hassett responded “*It has been sir*”.

#### The Traffic Commissioner’s decision

50. In his written decision dated 19 December 2019, the TC found that VE Hassett was a truthful, professional and honest examiner and the TC accepted his evidence. The TC found that it was “*entirely reasonable*” for VE Hassett to believe that the dual maintenance records held by CM Coaches were evidence of false records. However, the TC had concluded that they were not evidence of deliberate falsification, but rather, they reflected a “*culture of systemic incompetence and disregard for basic principles of road safety*”. There was no justification for the very personal and hurtful allegations made by Mr Hazell against VE Hassett and the TC empathised with the officer

in respect of the strain that he would inevitably have been placed under. It was “*evident*” to the TC that VE Hassett was “*under stress*”.

51. As for VEM Trott, the TC found him to have been an “*entirely credible, professional and honest witness*” and he accepted his evidence. Again, it was “*entirely reasonable*” to suspect falsification of records; however, rather than deliberate falsification, the evidence “*describes the grossest of incompetence by Anthony and Michael Hazell*”.
52. In respect of Anthony Hazell, the TC found him to be “*a danger to the PSV industry as he is so grossly incompetent*”. It was deeply worrying that he was both a director and a transport manager of other entities. He should retire from the industry “*at the first opportunity*”. The TC “*struggled to identify*” a transport manager worse than Anthony Hazell. He “*completely missed the fact that having two separate safety inspections at different venues results in a loss of control. The chaotic maintenance system led to partial inspections days apart*”. The TC pondered how anyone could realistically consider the system to be satisfactory. Moreover, his “*insulting and patronising comments to an experienced vehicle enforcement manager illustrates his inability to work effectively in regulatory regime where safety is important*”. The TC noted that Anthony Hazell had applauded his son for “*putting his head over the parapet*” and complaining, making that comment soon after it was apparent to anyone with “*an iota of awareness that the very personal criticisms of a vehicle examiner were wholly unjustified*”. The description of the competition between mechanics was so ill judged that it “*beggars belief. The fact that in one breath he promotes competition between mechanics and in the next breath claims that that is not what he intended, merely illustrates his unreliability as a witness. He says what suits his purpose at the time*”. Having watched and listened to Anthony Hazell give evidence it was no surprise that a previous Upper Tribunal hearing led to “*excoriating comments*” about him. He appeared to have blotted out those criticisms, setting himself out as a model of compliance when the opposite was true.
53. The TC’s determinations in respect of Mr Hazell commence at paragraph 149 of his decision which reads:

*“I accept that Michael Hazell took a vehicle off the road when Mr Trott gave evidence that mistakenly suggested that there were problems with brake testing, that goes to his credit. Another positive feature in the balancing exercise undertaken is that he took off the road for a day a vehicle which the DVSA had reasonably but mistakenly thought was operated by him, was operated by someone else”.*

The TC further found that Mr Hazell was “*apparently intelligent and articulate*” although these qualities had not prevented him from making some “*appalling errors of judgement*”. The extent to which those were due to his father’s influence was unclear. The TC found that Mr Hazell grasped at straws to deflect criticism, an example being his claim that OCRS scores demonstrated good compliance. If he properly understood (or listened to) the DVSA examiners he would have appreciated the limited value of relying on OCRS

scores in a PSV operation where there have not been any roadside encounters. The TC noted that Mr Hazell had demonstrated tenacity, however, his *“consistent failure to accept personal responsibility is a concern. Blaming others does not absolve him from his responsibilities as a transport manager in a regime where he has allowed for PMIs to be spread across two different sites and without proper facilities. Instead of actively listening to DVSA examiners and taking on board constructive and valid criticisms he resorted to unjustified personal attacks questioning professionalism and integrity”*. Whilst he claimed to know the STC’s statutory guidance, he did not understand them (assuming he had read them). The number of occasions Mr Hazell had complained about individuals and the way he went about that illustrated his lack of personal responsibility. His instinctive reaction is to *“appeal, complain or make personal attacks if an adverse suggestion is put to him”*. The TC advised him to actively listen and learn. The use of a chaotic dual PMI system with inadequate partial checks on different dates did not amount to a satisfactory maintenance regime and for that reason alone Mr Hazell should lose his good repute as a transport manager and be disqualified as a director. The TC considered that the *“unjustified and sustained personal attack on the integrity of an experienced examiner has patently caused real harm. The personal impact on others appeared to be of little or no consequence to Michael Hazell. He merits losing his good repute as a transport manager and being disqualified as a director as a consequence of his personal attacks. Ironically Michael Hazell referred to a recent case involving a complaint where the Court of Appeal emphasised the need for operator licensing to be based on trust. I do not trust Michael Hazell and his inability to listen and engage with examiners is such that DVSA examiners might need specialist training and counselling before engaging with him. Michael Hazell’s behaviours are incompatible with a licensing regime which requires either trust or a proper appreciation for road safety. He fails on both counts and merits disqualification on both grounds”*.

54. The TC then went onto make some bullet point findings. In short, save in respect of rejecting the suggestion that the purpose of the split maintenance system was to disceive, he preferred the evidence of the DVSA officers on all issues. The following reflected on Mr Hazell’s lack of competence: the defective brake testing system; the lack of records; inaccurate records; the lack of RBT or other measured brake tests; the lack of written records in respect of a vehicle said to have been loaned to another operator; his failure to understand the PG13F&G; his failure to ensure that the records accurately showed maintenance arrangements. The TC rejected Mr Hazell’s evidence that the split maintenance system was one which the CPT had approved (an example of Mr Hazell blaming others) and he had failed to ensure, contrary to the advice of Mr Burch, that the TC had been properly notified of maintenance arrangements. Mr Hazell had allowed the introduction of a *“woefully inadequate and inherently dangerous maintenance regime whereby there were two half baked inspections, both inadequate and sometimes on different dates”*. Mr Hazell did not accept VE Hassett’s evidence but rather, made *“unjustified aspersions”*. If he were correct, then Mr Hazell could have produced the evidence to support his position but he did not. Rather, he

made “*wholly unjustified and cruel allegations in order to deflect his own failings*”.

55. The TC made reference to a balancing exercise and noted that whilst he had identified some positive features they were heavily outweighed by the significant road safety concerns as a result of the maintenance investigation and the unsubstantiated false allegations against DVSA officials. He reminded himself of the importance of TCs being able to trust operators and referred to the Upper Tribunal cases of 2012/034 Martin Joseph Formby t/a G&G Transport and 2006/227 Fenlon and further referred to the Upper Tribunal case of 2007/459 KDL European Ltd in which it was confirmed that there was a need in appropriate cases to make an example of an operator so as to send a warning out to the industry as a whole. Clearly the TC considered that this applied to Mr Hazell. Moreover, the TC referred to T/2017/55 Alistair Walter in which the Upper Tribunal emphasised the need for consistency in decision making relating to director disqualifications and transport manager repute. The TC had no difficulty in this case determining that Mr Hazell must be disqualified under s.28 of the Transport Act 1985 and lose his good repute as a transport manager not only in the interests of the travelling public and other compliant operators but also as a result of the unwarranted attacks upon a public official. The TC determined that this was not a case where it would be appropriate to have a time limited exclusion from the industry so as to allow the passing of examinations or to allow a period of time to pass. Mr Hazell would need to demonstrate a different character and that he was able to actively listen to others without reacting negatively, a feature that did not appear to come naturally to him. In the result, the TC made the orders set out in paragraph 1 above.

### The Appeal

56. In the days leading up to Mr Hazell’s appeal, he requested a copy of his witness statement along with the analysis which had been put before the TC during the course of the re-hearing. A witness statement which had not made its way into the appeal bundle was identified by the TC’s clerk and duly forwarded to Mr Hazell. This was the statement that had been produced by those representing Mr Hazell at the previous public inquiry and which had been put before TC Jones on day two of the re-hearing in the absence of one filed by Mr Hazell pursuant to the directions made (see paragraph 8 above). Mr Hazell was not satisfied with this statement, asserting that he had submitted an updated version of this statement during the course of the re-hearing and requested a copy. The TC’s clerk confirmed that Mr Hazell had not submitted a second statement and he produced an excerpt of the transcript along with other page references which confirmed that the TC only had the benefit of the statement produced at the first public inquiry. Mr Hazell then requested a copy of the digital recording of the two-day re-hearing as he was “*a little troubled*” by the “*documentation*” he had been sent. He was considering whether he should submit further grounds of appeal. He was asked to set out the reasons for being “*a little troubled*” so that his application could be considered on its merits. Mr Hazell then withdrew his application

although he did submit further grounds of appeal at the outset of the appeal hearing.

57. Mr Hazell's combined grounds of appeal amount to an extensive, wide ranging, repetitive discussion over twenty-one pages which include matters which are irrelevant. The numbering of the grounds below do not follow those of Mr Hazell's in his skeleton argument.
58. **Ground 1 – the TC failed to take account of Mr Hazell's second witness statement submitted in accordance with the TC's directions**

Mr Hazell asserted that he had filed with the OTC prior to the hearing and in accordance with the directions of the TC, a witness statement other than that which he had previously relied upon during the first public inquiry. Mr Hazell asserted that he had not only filed the second witness statement prior to the hearing but he had then provided a further copy of the statement to the TC on the morning of the second day of the re-hearing. He submitted that whilst it was clear that the TC then took time to read that statement, he then did not take it into account. The witness statement included OCRS calculations and Mr Hazell's analysis of the MOT statistics using the OCRS along with a list of positive features. The Tribunal asked Mr Hazell to hand up a copy of the witness statement he was referring to. He was unable to do so.

59. We are satisfied that there is no evidence before the Tribunal save for Mr Hazell's bare assertions, that he had complied with the directions made by the TC on 18 September 2020 whether within fourteen days or otherwise. Indeed, there is evidence to the contrary. The only witness statement produced at the re-hearing was that relied upon by Mr Hazell during the first public inquiry. The following references are of importance (numbers in brackets are references to appeal bundle pagination) and are found in the transcript of day 1 of the hearing:
- a) (331H) – when the TC was taking VE Hassett through his notebook, the officer accepted that he had not produced his notebook within the time specified by the TC in his directions, at which point the following exchange took place:
- TC: And in fact I gave also a direction for Mr Hazell to produce evidence, which I have not received yet.
- MH: Yeah. No, I was waiting to ... before I could give you a skeleton argument I was waiting to see if there was any addition evidence (sic) or there ..
- TC: Well it does not you (sic) actually setting out why you believe that the officers .. if you are questioning integrity it does not stop you setting out your case. It might have helped you give further evidence ...
- MH: *no, fair comment.*
- b) (370E) when the TC was taking VE Hassett through his report, he asked Mr Hazell whether he agreed with the officer's evidence about vehicle CV02OWZ and the following exchange took place:

- MH: *I am not entirely sure.*  
TC: *Can I remind you, Mr Hazell that I gave directions which required you to produce a statement as well. What I had expected is if you had complied with that direction you would have produced a statement saying “well this paragraph I disagree with because of X and that paragraph I agree these facts but not other ones.*  
MH: Mmm-hmm.  
TC: And that is the reason why it is taking a long time today –  
MH: Yeah  
TC: because you have not complied with the directions. I understand the point that you would rather the notebook, you would be able to see a typed copy of it, but one of the reasons it is taking a long time is that you are giving explanations now which you could have given in a statement, which is why I asked for the statement.  
MH: Mmm-hmm. Okay.  
...  
TC: Have you got evidence to challenge that?  
MH: (no verbal response)

- c) (401B) when Mr Hazell raised the issue of the MOT for SIG 8434 being included in VE Hassett’s analysis of MOT failures:

- TC: It is not clear what data it is you are looking for without being specific. If you had written to me to say “the data which I will be interested in ..”. You were asked to produce a skeleton and to do a statement, which you have not done. You have said that you cannot do it until you have seen this, the notebook, and the answer is the notebook does not actually help you at all. You are the one who is casting aspersion. You have said there are inconsistencies ... If you are saying that there is an issue which is raised in the Upper Tribunal’s Decision that you think is of some significance, you have not raised that in your statement, partly because you have not produced a statement.  
MH: You are asking me the question and I’m giving you the answer now.

- d) (424H) when Mr Hazell asserted that he had received professional advice from the CPT about using the split maintenance system, the TC commented:

“You have not produced evidence of that but you say that. All Right. In many instances you have made assertions and say have got evidence of things and you have not actually produced them. What does concern me is that I did ask and I gave a direction about producing a statement because I wanted to know what the issues were relating to your challenges before today’s hearing. It is now twenty five to five and we are still on Mr Hassett’s evidence. Part of the reason, the prime reason, for that is that if you had produced this statement setting out what your views were and what the position was, it would have made

it much, much easier for me to deal with this Public Inquiry. It is the reason why it has to clearly go into a second day”.

Having considered the above excerpts from that transcript, we are satisfied that had Mr Hazell complied with the TC’s directions by filing a witness statement as he now asserts, then the TC would not have made repeated comments about his failure to do so and furthermore, Mr Hazell would have quickly corrected the TC when he made the comments that he did, by informing the TC that he had complied with his directions. He did not do so.

60. At the beginning of the second day, Mr Hazell enquired as to whether the TC had received the statement that he had handed in that morning. The TC confirmed that he had and the following exchange took place:

TC: Before the hearing started, the clerk said that he had a document which was handed in at a previous, or referred to at a previous hearing, and I have said I should not receive documentation unless it is sent to other people. So is this something I have not seen? All right, what document is this?

MH: This was a statement prepared for my last hearing but it is still relevant to this hearing.

TC: All right.

MH: If I had had it yesterday it would have helped progress. I think that is what you were asking of me and I was able to locate it.

...

TC: ..You produced a statement for the last hearing. I required you to produce a statement for this hearing which you did not do, but you did produce one for the last hearing. Are you asking me to read the statement from the last hearing?

MH: Yes.

...

Banks (solicitor for Mr Gray):

I have seen it .. I think what Mr Hazell is referring to is a statement which ... was submitted by his then legal representative before the last hearing. So that was his brief.

TC: All right. So the content of the statement is essentially described in the Upper Tribunal decision anyway.

This exchange confirms that the statement that was produced on the second day of the hearing by Mr Hazell was the very same statement that had been produced for him by his solicitors for the first public inquiry. There is nothing to suggest that another witness statement was submitted by Mr Hazell. Whilst he relies upon the TC noting at the end of the second day that Mr Hazell had “*given me a list of some of the balancing features that need to be taken into account*”, it did not follow that the list was one which was written as opposed to the list of positive features Mr Hazell contended for in his oral evidence (see paragraph 48 above). If there had been a second witness statement prepared in compliance with the TC’s directions, we have no doubt that Mr Hazell would have been able to provide a copy to the Tribunal. He was unable to do so. Moreover, it is of note that in his original grounds of appeal submitted with his

notice of appeal (pg 653), Mr Hazell confirmed that the witness statement he relied upon at the re-hearing was that prepared by his legal representative for the first public inquiry along with inspection sheets for Coach Hire Services (although he produced only one such sheet). In the result, we are satisfied that this ground of appeal on this issue is without foundation. Moreover and for the avoidance of doubt, the TC did take time to read the witness statement that was available to him prior to Mr Hazell giving evidence.

61. **Ground 2: The TC was wrong to find that VE Hassett had suffered stress as a result of Mr Hazell's conduct and should not have taken it into account in his balancing exercise and when determining the issue of good repute**

Mr Hazell submitted that prior to making a determination about the effect that Mr Hazell's conduct may have had upon VE Hassett, he should have put it to Mr Hazell that his conduct had had an adverse effect upon VE Hassett's wellbeing. Mr Hazell further submitted that in any event, there was no evidence that VE Hassett had suffered stress as a result of Mr Hazell's conduct. He asserted that he had "*done nothing wrong*". He had been professional and objective throughout and described his communications with VE Hassett as being "*polite and courteous*". He was entitled to make a complaint and had grounds for doing so. Had VE Hassett "*exhibited the correct level of diligence in his report*" he would not have reported that Anthony Hazell was working with CM Coaches when prohibited from doing so (the prohibition having been removed in December 2016); he would not have included the MOT failure of SIG8434 into his MOT calculations when Mr Hazell "*had never owned or operated*" the vehicle and he would not have told an employee of CM Coaches what the OCRS was for the company (not a matter explored in the public inquiry although mentioned in Mr Hazell's PG13F&G response). Mr Hazell doubted the integrity of not only VE Hassett but also impliedly, VEM Trott because of the way in which VE Hassett's notebook had been redacted, making Mr Hazell suspect that hidden behind those redactions were "*disparaging and unprofessional comments*" made by VE Hassett about Mr Hazell. He pointed to the choice of language of VE Hassett in his notebook to describe Mr Hazell's conduct such as "*fanning about again ... timewasting tactics*". Mr Hazell submitted that he was sympathetic to those who suffer mental illness but it was unlikely to be caused by one particular factor. In any event, if mental illness had been a significant issue, then where was the DVSA's duty of care towards VE Hassett?

62. Mr Hazell reminded the Tribunal that on the second day of the re-hearing, he had in any event stepped back from the allegations he had made about VE Hassett although he did not know why "*they*" (being the officers) "*would try and make statistics worse*".
63. Our starting point is Mr Hazell's response to the PG13F&G in which he questioned VE Hassett's honesty and fairness. He considered that too much guesswork had been used by the officer when preparing his maintenance investigation report. Mr Hazell appended to his response an excerpt from the Civil Service Code and suggested that VE Hassett should follow it. The excerpt related to Standards of Behaviour and in particular, integrity, honesty,



objectivity and impartiality. Mr Hazell concluded that VE Hassett's conduct was "*far from professional*" and he required a response to the concerns he had raised with regard to VE Hassett's "*capability and professional conduct*". Mr Hazell then made persistent requests for the "*the raw data*" that VE Hassett had used to compile his report, even though the data was that of the company which remained in the possession of the company at all times. He then made a formal complaint to the Department of Transport about VE Hassett. A copy of the complaint was not within the papers but whatever the contents, such a complaint is a serious matter. At the first public inquiry, two matters became apparent: VE Hassett's information that the prohibition against Anthony Hazell having anything to do with CM Coaches which was out of date. It had in fact been removed on 1 December 2016. Neither VE Hassett or VEM Trott were aware of that change. Secondly, when going through his evidence about the MOT failure rate during the first public inquiry, VE Hassett mentioned registration SIG8434 which Mr Hazell immediately challenged as being a vehicle which the company had ever operated. As it transpired, the inclusion of this MOT failure whilst being a mistake was an understandable one. Contrary to Mr Hazell's repeated denials that this vehicle had ever been operated by the company, it had been when it was previously registered as T184AVA up until at least 9 February 2017 when a PG9 had been issued in respect of it. VE Hassett had mistakenly included the later MOT failure on 9 February 2018 because he had wrongly assumed that CM Coaches had simply changed the registration number to a private plate as so many operators do. These were mistakes on the part of VE Hassett. There is no evidence of mala fides and neither they, together with the allegation that VE Hassett had disclosed the company's ORCS score to one of its employees, begin to justify the allegations made by Mr Hazell nor his complaints about VE Hassett and to a lesser extent, VEM Trott.

64. The assertion that the TC should have asked Mr Hazell whether he had caused stress to VE Hassett as a result of his conduct is misconceived. It is not for Mr Hazell to say whether he had caused stress to VE Hassett but rather the officer himself and of course he did inform the TC that this investigation and the subsequent proceedings had caused him stress. But in any event, if Mr Hazell had given a moment's thought to the likely consequences of making the allegations that he made along with the complaints not only to VE Hassett's senior officers but to the Department of Transport itself, he would or should have appreciated that it would be likely that VE Hassett would be adversely affected by them. There is no evidence that he considered the consequences of his actions at all. Moreover, whilst Mr Hazell avers that the TC should have taken into account the withdrawal of his allegations against VE Hassett on day two of the re-hearing, that indication was too late and in any event not genuinely made bearing in mind his continued conduct in questioning the integrity of both officers during the course of this appeal. Mr Hazell is well aware that attacks on the integrity of DVSA officers if unfounded (as these were) go to the issues of trust and whether an operator is likely to accept criticism, advice and guidance in the future rather than resulting in complaints about the officers concerned. The TC's assessment of Mr Hazell's conduct and attitude as set out in paragraph 53 above is beyond criticism and is well founded on the evidence. In

conclusion, the TC was right to take into account in the balancing exercise when determining the issue of good repute, the stress suffered by VE Hassett as a result of Mr Hazell's conduct..

65. **Ground 3: The TC was wrong to reject Mr Hazell's compliance analysis based on his interrogation of the company's OCRS**

During the course of both public inquiries, Mr Hazell asserted that his MOT first time pass rate was nearer to 70% rather than 44% as calculated by VE Hassett using the MOT system. Mr Hazell had used the company's OCRS to calculate his figures. In both public inquiries (and in VE Hassett's comments on Mr Hazell's response to the PG13G&F), Mr Hazell's approach was rejected by the DVSA officers upon the basis that: the OCRS is a tool to assess risk only; MOT passes following a failure of a vehicle at the testing station with remedial work carried out at the testing station in order to achieve the subsequent pass, were not marked as PRS on the OCRS; as PSV operators are not required to specify their vehicles on their operator's licence, it was difficult to link a vehicle with an operator at any given time and so the OCRS was unreliable when it came to calculating the MOT pass rate of PSV operators; the traffic light system indicating compliance risks depended upon the areas of compliance that the DVSA was concentrating on at any given time. Mr Hazell averred before the Tribunal that VEM Trott's statement that the OCRS was "*largely irrelevant*" was "*totally false*". Whilst the DVSA used a different system for compiling MOT statistics, Mr Hazell's approach was the relevant one and should have been taken into account. Moreover, an analysis should have been undertaken of the respective figures during the periods of tenure of Colin Holt, Christopher Hilditch and Mr Hazell. If such an analysis had been undertaken, then it would have become clear that Mr Hazell had improved the OCRS of the company to green/green from amber/amber.

66. We are satisfied that it has been abundantly clear to Mr Hazell from the moment that he received a copy of VE Hassett's maintenance investigation report that his use of the OCRS in an attempt to undermine the findings of VE Hassett was one which was soundly rejected and that it did not withstand close scrutiny. If he was in any doubt about that, such doubt would have been dispelled by the time the first public inquiry had concluded and TC Rooney had produced his written decision. Mr Hazell has not attempted to obtain any evidence which might support his approach or indeed undermine that of the DVSA. He simply continued with his bold and bare assertions that the OCRS was a valid tool for calculating MOT pass rates and PG9 figures and that VE Hassett's approach was wrong. The evidence before the TC was clear and he was of course, able to draw upon his own knowledge as an experienced TC of the purposes for which the OCRS could be used. Reliably calculating the MOT pass rate of PSV operators is not one of them. The determination of the TC that "*If [Mr Hazell] properly understood (or listened to) DVSA examiners he would have appreciated the limited value of relying on OCRS scores in a PSV operation where there have not been any roadside encounters*" is well made. Whilst that finding relates to roadside encounters, the TC accepted the evidence of the officers generally and in the absence of

any cogent evidence produced by Mr Hazell which had the effect of undermining the officers evidence on this point, the TC was entitled upon the evidence to reject Mr Hazell's approach and it follows that the TC did not err in failing to take Mr Hazell's analysis into account. As for separately analysing the company's MOT pass rate when under the control of Mr Hazell from the rates under Mr Holt and Mr Hilditch, this was not done. However, such an exercise would have made little difference to the overall findings of the TC whether in respect of Mr Hazell as a transport manager or as a director.

67. **Ground 4: Flawed DVSA report**

The basis of Mr Hazell's assertion that VE Hassett's report was "*flawed*" is as follows:

- VE Hassett failed to disclose the notes he used to compile his report despite the TC's direction to do so. Rather, he produced "*some kind of vague diary with basic notes that included lots of redactions and unprofessional/disparaging comments about me. The TC concluded that this had no probative value and I agree*"
- Once it was acknowledged that SIG 8434 "*was not mine*", the MOT statistics were not adjusted to reflect this which means that the data "*used by the TC to come to his decision was flawed and cannot stand ..*"
- VE Hassett did not produce the list of vehicles which he maintained at the first public inquiry had been given to him by a member of staff of CM Coaches. The TC did not ask him to provide a copy
- "*they*" would have "*run a report on their IT system which compiled all vehicle MOT and encounters for CM Coaches. The data would have returned a list of results, one of which would have been SIG. Why can I simply not have this report? The level of secrecy and avoidance indicates that there is a strong possibility of other incorrect entries*". Mr Hazell complained that whilst he had been told that the data was within the PG13F&G that was not the case. The report was taken from "*raw data files*". A forensic analysis of the report was needed and in the absence of such a report, Mr Hazell had been denied a fair and impartial inquiry.

68. We are satisfied that there is nothing in this point. Apart from the MOT passes taken from the MOT system and the PG9 history taken from the SAS and Citrix systems, VE Hassett's report was based entirely upon the company's own maintenance records. Those remained within the control of the company at all times whilst VE Hassett worked from scanned copies, making notes of dates, mileage figures and the like and then adding those into his report. The "*raw data*" belonged to and remained with the company.

69. In the normal course of events, diligent and compliant operators study the DVSA maintenance investigation report compiled in respect of their fleet, check their own records to ensure the contents of the report are correct and if mistakes are identified, they bring those to the attention of the officer concerned and/or the TC. Apart from the wrongful inclusion of an MOT fail for SIG 8434 (for which there is an explanation), Mr Hazell failed to put before the

TC any evidence that the information contained in VE Hassett's report was flawed (his reliance on the OCRS has already been dealt with). In his response to the PG13F&G, he did produce schedules for four vehicles showing dates for PMIs which he described as pre-MOT inspections, the records for which were not within the maintenance files of the vehicles concerned when VE Hassett inspected them and Mr Hazell has not produced evidence in support of the schedules. The schedules were expanded upon in Mr Hazell's witness statement but the combined effect of the schedules and the statement did not undermine VE Hassett's findings that on the face of the records, there were stretched intervals between PMIs. We repeat that Mr Hazell did not at any stage produce documentation in support of the schedules. Mr Hazell also gave explanations for other aspects of VE Hassett's reports, such as mileage driven when vehicles were VOR'd and produced two invoices to show that one vehicle had been hired to Babcock. Whilst the invoices covered the relevant missing mileage for that vehicle, the documents did not (nor did Mr Hazell) explain how it came to be that the vehicle was on the road at all when it was VOR'd. Other documentation appended to Mr Hazell's statement did not take matters much further. In short, his PG13F&G response and witness statement did not undermine VE Hassett's findings at all and even by the date of the re-hearing, Mr Hazell had failed to collate the evidence he said existed to demonstrate that he was a compliant operator and that VE Hassett's report was "*flawed*". For example:

- a) In relation to VE Hassett's conclusion that Mr Hazell had failed to notify the TC of the change of business address in June 2018, Mr Hazell stated "*I disagree with that*". When asked whether he had any evidence that he had notified the TC, he stated "*Yes, I can get some evidence for that*". Such evidence was not subsequently forthcoming;
- b) During discussions about the company's maintenance being undertaken by Steve at Carmel, Mr Hazell asserted that he employed Steve. The TC asked whether he had a copy of a contract of employment covering the arrangement to which Mr Hazell replied "*I will have, yeah. Not with me today*". A contract was not later produced;
- c) When VE Hassett was dealing with a split inspection which took place at Exeter and Northlew and over two days in respect of FA07 XEH but with the same mileage, Mr Hazell was "*not sure*" whether he agreed with VE Hassett's evidence or not. He said that he would need to look at the records again and that he would "*verify the position later*". He did not;
- d) When VE Hassett was dealing with the absence of any brake testing between 30 November 2017 and June 2018 in respect of FA07 XEH, Mr Hazell stated that he nevertheless believed that brake tests would have been carried out along with an RBT check. He continued "*I'd like to be able to see if I can produce evidence*". No evidence was produced;
- e) When VE Hassett was discussing the VOR report for a vehicle which was said to be on loan to Stamps Coaches without evidence of a hire agreement, Mr Hazell averred that there was such an agreement but he had not and did not produce it;
- f) When CV02 OWZ was discussed in the context of it having been VOR'd and then returned to use without evidence of a first use check (equivalent to a PMI), Mr Hazell was asked if he had evidence that such a check had

taken place to which he responded “*I hopefully can find something ..*”. He did not later produce such evidence;

- g) When asked whether Mr Hazell could contradict VE Hassett’s evidence with regard to FJ06 BNZ and missing mileage between the vehicle being VOR’d and the next PMI, Mr Hazell responded “*no, not with me*”. He did not later produce such evidence;
- h) During discussions about WK07 AOJ and a nine week gap between PMIs, Mr Hazell contended that an MOT would have taken place during the gap and that he “*could find evidence*” of that. He did not later produce such evidence.

The TC’s description of Mr Hazell as set out in paragraphs 53 and 54 above is one which is well founded on the evidence before the TC and there was nothing before the TC or indeed this Tribunal which could form the basis of a finding that once the two mistakes already identified above had been acknowledged by VE Hassett, that his maintenance investigation report was flawed.

70. **Ground 5: The TC failed to conduct a full and fair balancing exercise and wrongly concluded that Mr Hazell had lost his good repute**

There are only two positive features identified by the TC at paragraph 149 of his decision which are set out in paragraph 53 above. The first is the removal of a vehicle from the road overnight when VEM Trott mistakenly suggested that Mr Hazell was misinterpreting the readings from the Tapley meter. That is a positive feature. The second is one which neither Mr Hazell or the Tribunal understand to be relevant to the facts of this case. It follows therefore that the TC only identified one positive feature to weigh into the balance against the negative features.

71. In compiling a list of features which Mr Hazell asserted to the Tribunal that the TC should have taken into account on the positive side, he failed to appreciate that compliance with the regulatory regime is not something that goes to the credit of an operator because compliance is expected. Further, he also failed to appreciate that as the TC was conducting a rehearing, a failure to come to the same adverse findings as TC Rooney could not amount to a positive feature to be taken into account. Moreover, the TC could not make positive findings about matters when there was no evidence before him on that issue. It follows that the following matters raised by Mr Hazell could not have been capable of amounting to positive features in this case:

- a) The fact that TC did not find that Mr Hazell had been guilty of “*nefarious behaviour*” in connection with the sale of CM Coaches to Mr Gray or in the use of Mr Holt’s VOL log-in details;
- b) That Mr Hazell had sought professional advice with regard to the sale;
- c) That he performed regular driving licence checks;
- d) That financial standing was maintained;
- e) That a forward planner was in use;

- f) The reduction of CM Coaches fleet from 15 to 12 to free up time for Mr Hazell to train as a commercial pilot. This was not mentioned at all during the rehearing;
- g) Mr Hazell's attendance on various driver CPC modules in 2018 which are a legal requirement.

Other features which Mr Hazell wrongly asserted should be viewed as positive features and which confirmed his good repute:

- a) The split maintenance regime was a functioning one that manifested itself in positive maintenance statistics: this assertion ignores all of VE Hassett's evidence about the significant and serious maintenance failings which were either caused by the split maintenance system or which were in addition to it. Not only was the split maintenance regime reckless and dangerous but VE Hassett's evidence demonstrated that the driver defect reporting system was sadly wanting (see paragraphs 21, 26, 28 and 29 above) and vehicles were being used when VOR'd and without first use checks and when PMI intervals were being stretched. Finally, the standard of record keeping was negligently poor;
- b) That on day two of the rehearing, Mr Hazell notified the TC that he was withdrawing the allegations he had made against VE Hassett: we find that these were empty words bearing in mind that Mr Hazell continued to make accusations against VE Hassett and VEM Trott during the appeal process (see paragraph 62 above);

The matters which carried little if any positive weight are as follows:

- a) Mr Hazell's attendance on a two-day transport manager CPC refresher course in 2015 whilst he remained disqualified;
- b) The letter produced by Mr Hazell which he asserted demonstrated that by a letter dated 12 February 2018, he had notified the Central Licensing Unit of the vehicle fire on 5 February 2018. The notification should have been made on the prescribed form to the DVSA within twenty-four hours. The letter did not carry the address of CM Coaches or the operator's licence number or the address of the intended recipient. The production of this letter (which on any view was wanting), demonstrated that Mr Hazell was not aware of the important procedure to be followed in the event of a vehicle fire;
- c) The production of one sheet of paper entitled First Use Inspection Audit for the week of 14 May 2018 which Mr Hazell asserted was one of many which had not been produced to VE Hassett during his investigation. Whilst he maintained that these were kept in a separate file, he did not explain why they had not been shown to VE Hassett. Moreover, to produce only one Audit could not provide evidence that a system was in place and continued to function;
- d) A document entitled Driver Induction to Daily First Use Checks, the driver in question being Clive the fitter and dated 9 May 2018. The same comments apply as in c) above;
- e) The green/green/green OCRS at the time the investigation took place (see comments above);

- f) That only advisory notices were issued during VE Hassett's fleet inspection when he and his colleague were unable to inspect the three vehicles over a pit;
- g) Mr Hazell averred that as soon as he was aware that the calibration certificate for the Tapley/Bowmonk meter had expired, he immediately arranged for it to be re-calibrated. This is inconsistent with the entry on a PMI sheet in August 2018 referred to in paragraph 20 above which notes that the "*calibration expired on the brake tester*" which points to the re-calibration did not take place until after August 2018. When the Tribunal raised this with Mr Hazell he averred that this note referred to a Bowmonk meter rather than a Tapley meter. In fact, as is evident from the sample print-out at page 682 of the appeal bundle, a Bowmonk is a Tapley meter. Moreover, when this PMI sheet was considered during the course of the re-hearing, Mr Hazell did not inform the TC that the note referred to another brake test meter and even if it did, the note demonstrated that a second meter was being used when its certificate had expired;
- h) That in a letter dated 31 October 2018, Mr Hazell invited a further maintenance investigation in six months, to be conducted by VEM Trott. Whilst this is capable of demonstrating a willingness on the part of Mr Hazell to work with the DVSA, he was only prepared to do so on his own terms and his subsequent conduct demonstrated that he has a hostile and obstructive attitude towards the DVSA officers.

In addition to the one relevant positive feature identified by the TC, the following matters could and should have been weighed into the balance:

- a) Mr Hazell and his father did cease to use the split maintenance system once they had been told that it was non-compliant. However, only limited weight can be attached to this action bearing in mind the serious and reckless road safety issues which were inherent in the split maintenance system which should never have been instituted in the first place and the continued stance of Mr Hazell that it was a system that produced positive results and that there is nothing in the Guide to Maintaining Roadworthiness which suggests that the split system was wrong (see page 662 of the bundle);
- b) Mr Hazell had held a one vehicle licence for over three years without any maintenance issues being identified by the DVSA;
- c) Not only did Mr Hazell remove a vehicle off the road mid public inquiry when VEM Trott stated that the Hazells' were misreading the Tapley meter readings, he also arranged for it to have a RBT prior to the commencement of the second day of the re-hearing;
- d) There were no "S" marked PG9's on the company's record.

Whilst the TC's balancing exercise of the positive and negative features was incomplete, a full analysis as contended for by Mr Hazell does not result in a different outcome particularly when one takes account of Mr Hazell's significant regulatory history. A disqualification order of 18 months, is on any view, a significant order. Yet within thirteen months of the disqualification period coming to an end and 11 months after the prohibition against him having any role in the operation of CM Coaches had been lifted, he had

become the sole director of the company (July 2017) and had then instituted the split PMI regime in early 2018. Whilst Mr Hazell was and remains keen to salami slice the OCRS to show that the company fared better when he was the transport manager for the company, he ignores that he was the sole director during the period considered by VE Hassett in his report. There are only three references to records pre-dating Mr Hazell's directorship (see paragraphs 14, 21 and 25), including the history of the vehicle which caught fire when he was the sole director. It was Mr Hazell's responsibility to ensure that in all material respects, the company's maintenance and regulatory compliance was beyond criticism. He did not do so. The TC was plainly right to conclude that Mr Hazell has lost his good reputation as a transport manager and should be disqualified under s.28 of the 1985 Act.

72. In all of the circumstances and despite the too narrow approach taken by the TC in respect of the balancing exercise, we are satisfied that his determinations in respect of Mr Hazell were plainly right as was his approach to whether Mr Hazell could be trusted in the future to operate compliantly; to cooperate with DVSA officers and to take on board constructive advice and criticism without resorting to unfounded allegations being made against those who are responsible for ensuring that road safety is not compromised and that non-compliant operators do not gain a competitive advantage over other compliant operators who spend the time and the necessary resources in ensuring that compliance is maintained. Whilst Mr Hazell relied upon paragraph 12 of *NT/2013/82 Arnold Transport & Sons Limited*, placing himself in the first of the four categories identified by the Tribunal, that ignores his regulatory history and his continuing negative attitude towards the DVSA officers in this case. We are satisfied that the TC's findings are beyond criticism and they were entirely proportionate (proportionality featuring as a separate ground of appeal in Mr Hazell's skeleton but dealt with now in this paragraph). Mr Hazell should reflect upon his regulatory history to date and his professional relationship with the DVSA and learn from the findings that have been made. When he is able to establish, after substantial reflection, that he has achieved a change of attitude towards compliance and the regulators and can show that he is someone who can be trusted going forwards, then it is open to him to apply to have both disqualification orders set aside. A long period of reflection is required.

73. **Ground 6: the disqualification order under s.28 of the Transport Act 1985**

We are satisfied that in the circumstances of this case, that an indefinite disqualification under s.28 (the comments made in paragraph 71 being applicable) is entirely proportionate. However, we are also satisfied that the disqualification as set out in the order goes beyond the strict statutory wording set out in s.28(1) which reads:

*“Where the traffic commissioner for any traffic area revokes a PSV operator's licence, he may order the former holder to be disqualified, indefinitely or for such period as he thinks fit, from holding or obtaining a PSV operator's licence”.*



It is clear from the wording of s.28(4), that the power to disqualify and the continuing disqualification, covers those who are or become directors or those holding a controlling interest in a company which holds or obtains an operator's licence or those who operate PSV vehicles in partnership with a person who holds such a licence.

The wording used by the TC is as follows:

*“The disqualification extends to Michael Hazell being a director, shareholder, consultant, manager or employee of any entity holding an operator's licence”*

Whilst the disqualification automatically includes being a director of a company holding or obtaining an operator's licence and includes having a controlling interest in a company, such as being a majority shareholder and being in partnership with a licence holder, it does not automatically include the other roles listed by the TC. All will depend upon whether, irrespective of his job description, within or as a consultant to a licence holder, a disqualified person is by themselves or with others, operating PSV vehicles. Any disqualified person can expect to have their role and influence over a licence holder closely scrutinised if they are either employed, self-employed in whatever capacity or there are some other links which raise the suspicion that the disqualified person is circumventing the order of disqualification by their involvement with a licence holder.

74. The error made by the TC is an understandable one as all TCs have the power to require undertakings from applicants for a new operator's licence that a named person will not have any involvement in the management, administration or control of that company or indeed that the named person will not be employed in any capacity whatsoever. Such undertakings are usually required and given when it is suspected that an application for a new licence is a means by which a disqualified person can circumvent their disqualification by using the new operator as a “front”. An example of an undertaking given in these circumstances is in this very case when CM Coaches applied for a licence in 2015 and the relevant TC required an undertaking that neither Mr Hazell or his father would have any involvement in the company. However, as already noted, a prohibition such as this or similar cannot be read into the wording of s.28.
75. It is open for an operator to employ Mr Hazell as a driver or a vehicle cleaner or other similar role which is clearly separated from the administration of the licence. But if Mr Hazell continues to be involved in the operation of PSVs and there is any suggestion that the role that he purports to play is itself a “front” to enable him to exercise control, whether by himself or with others, over the operation of PSV vehicles, then he will no doubt come under the close scrutiny of the DVSA and the TC. A clear separation must be demonstrated at all times between the role that Mr Hazell is said to fulfil and any management function of the operation to avoid the conclusion that he is in fact either a shadow director or a de facto director (see T/2014/11&12 David Keith Bradley & Julie Bradley or is in some other way, a controlling mind of the company.

Conclusion

76. It follows from our findings above, that this appeal is allowed to the limited extent that the disqualification made under s.28 of the 1985 Act should be limited to the wording of the statute. Otherwise, we are satisfied that neither the law or the facts of this case impel us to come to a different view to that of the TC as per the Court of Appeal decision in Bradley Fold Travel Ltd & Peter Wright v Secretary of State for Transport (2010) EWCA Civ. 695.

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

**Her Honour Judge Beech  
8 December 2020**