Neutral Citation Number: [2018] UKUT 107 (AAC)

Appeal No. T/2017/68

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER
TRAFFIC COMMISSIONER APPEALS

IN AN APPEAL FROM THE DECISION OF
Simon Evans, Traffic Commissioner for the
NORTH WEST OF ENGLAND dated 21 August 2017

Before:

Her Hon. Judge J Beech, Judge of the Upper Tribunal
George Inch, Specialist Member of the Upper Tribunal
Andrew Guest, Specialist Member of the Upper Tribunal

Appellant:

PETER WRIGHT

Attendance:
For the Appellant: In person although assisted by Roger Allanson, solicitor, acting as a Mackenzie Friend

Heard at: Field House, 15-25 Bream's Buildings, London, EC4A 1DZ
Date of hearing: 20 March 2018
Date of decision: 5 April 2018

DECISION OF THE UPPER TRIBUNAL

IT IS HEREBY ORDERED that the appeal be DISMISSED

SUBJECT MATTER:- Good repute

CASES REFERRED TO:- Bradley Fold Travel Limited 2007/176; Bradley Fold Travel Limited 2009/289; Bradley Fold Travel Ltd & Peter Wright v Secretary of State for Transport (2010) EWCA Civ. 695; Bradley Fold Travel Limited & Peter Wright v Vehicle and Operator Services Agency T/2013/56; Aspey Trucks Ltd 2010/49; Woolmington v DPP (1935) UKHL 1; Dupont Steels Limited v Sirs (1980) 1WLR 142.

REASONS FOR DECISION

1. This is an appeal from the decision of the Traffic Commissioner for the North West of England ("the TC") made on 21 August 2017 when he refused to grant a standard national public passenger vehicle ("PSV") operator's licence to Bradley Fold Travel Limited under ss. 14ZA(b), (c) and (d) and 14ZC(1)(a) and (b) of the Public Passenger Vehicles Act 1981 ("the 1981 Act") and found that Mr Wright had not satisfied him that he was of good repute.

Background

2. The background to the appeal can be found within the papers and the TC's written decision. On 23 March 2004, Bradley Fold Travel Limited ("the company") was granted a standard national PSV licence authorising seven vehicles. Mr Wright was one of two directors (the other being Miss Shipperbottom) and Mr Wright was the nominated transport manager. As a result of a number of prohibitions being issued to the operator's vehicles in 2004 and then in mid 2006, two of which were "S" marked, signifying a significant failure of the operator's maintenance systems and a finding that the intervals between preventative maintenance system were being exceeded, the operator was called to a public inquiry. It is of note that during the course of the public inquiry, Miss Shipperbottom stated that she was unable to control Mr Wright and felt that the time had come for her to leave the company in order to care for her mother. Ultimately, the traffic commissioner (Beverly Bell) revoked the company's operator's licence upon the basis that the company and the two directors had lost their good repute. An appeal against that decision came before this Tribunal (formerly known as the Transport Tribunal) and was allowed, largely as a result of the way in which the public inquiry was conducted. The matter was remitted for rehearing by a different traffic commissioner. However, in view of the serious failings in the company's maintenance systems, the Tribunal curtailed the number of authorised vehicles on the licence from seven to five until the rehearing. For the full background details and the findings on appeal, see *Bradley Fold Travel Limited Appeal 2007/176*.

3. The rehearing took place in 2008 before Deputy Traffic Commissioner Hinchliffe ("the DTC") who maintained the vehicle curtailment and allowed the licence to continue although he found that Mr Wright's good repute was found to be tarnished although not lost. The DTC attached a number of bespoke undertakings to the licence which were designed to provide him with assurance about the fitness and serviceability of the company's vehicles through:

   a) A requirement for pre-MOT testing;
   b) Regular roller brake tests using an installed in-house facility, and

c) An arrangement that an external contractor would carry out both preventative maintenance inspections ("PMIs") and all repairs save for those which were purely advisory in nature.

4. The company and Mr Wright were called to a third public inquiry in 2009 as a result of an unsatisfactory maintenance investigation carried out by Vehicle Examiner ("VE") Sadique and an unsatisfactory traffic compliance investigation by Traffic Examiner ("TE") Finnegan. VE Sadique found that there had been a failure to comply with the undertaking that a third party would carry out effective PMIs and carry out all but basic repairs; there was an absence of documentary evidence of pre-MOT checks; a vehicle had been used for a week without an MOT certificate being in force; whilst a roller brake tester had been purchased by the operator, it had not been installed. TE Finnegan found that Mr Wright did not record his home to work journeys; there was a substantial amount of missing mileage; Mr Wright had failed to take a weekly rest on three occasions within the period examined; he had failed to record other work during the weeks in which he carried out EC regulated journeys; he had committed centre-field infringements and he had used a tachograph chart for a period in excess of 24 hours.

5. In paragraph 28 of his decision, the DTC described the case as being "*extremely serious"* with "*clear public safety implications, coupled with an almost arrogant disregard – or, at least, a wilful misinterpretation – of undertakings given last time, coupled with the expectations that we all had in relation to future maintenance arrangements and the role of the transport manager".* He described the drivers' hours offences as "*serious".* The DTC went on:

"*38. What troubles me, also, is the strong feeling, in the context of all the evidence and my impressions of Mr Wright generally, that his evidence cannot be trusted, and he manipulates the facts, and seeks to add credibility to his evidence by throwing in much irrelevant detail. Apart from the objective assessment of the issues that I have attempted to undertake in this decision, I also look at Mr Wright as would a jury … all in all, I believe that Mr Wright is a manipulative person, and is not a man that the Traffic Commissioner can do business with any more".*

Elsewhere in his decision (paragraph 29), the DTC said of Mr Wright's evidence about the breach of undertaking that PMIs and all repairs (save for those described as advisory) were to be conducted by an outside contractor:

"*… the designation of the vast majority of defects as "Advisory" is troubling, rather than reassuring, and on balance this approach strikes me as a manipulation by Mr Wright – which, having now watched and listened to him at two public inquiries, is an impression consistent with my overall impression of him as a witness whose evidence is not reliable".*

The TC found that the company and Mr Wright as its director and transport manager, had lost their good repute. He concluded:

"*… In my judgment, this is now a case where revocation is not only proportionate, but also inevitable – if the PSV operator licensing system is to have any credibility. Bradley Fold Travel does indeed deserve to be put out of business. And I further consider that a reasonable period of time must elapse before Mr Wright could possibly claim to have regained his good repute, and before he could possibly return to this important industry – upon which so many people, including vulnerable people and schoolchildren rely, and in which they put their faith and trust."*

The DTC revoked the company's operator's licence and disqualified the company and Mr Wright from holding an operator's licence in any traffic area for 18 months.

6. The company and Mr Wright appealed to the Transport Tribunal. Their appeals were dismissed and at paragraph 14 of the judgment, the Tribunal endorsed the DTC's findings that Mr Wright was "*manipulative and unreliable".* For the detailed factual background and the findings of the DTC and Transport Tribunal see *Bradley Fold Travel Limited 2009/289.*

7. The company and Mr Wright appealed to the Court of Appeal. Their appeals were dismissed. See *Bradley Fold Travel Limited & Peter Wright v Secretary State for Transport (2010) EWCA Civ 695.*

8. On 30 October 2012, a Volvo two axle 53 seater PSV, registration number IIL 3502, which was owned by the company, was impounded during a test purchase operation. The vehicle which was carrying passengers, was being driven by Mr Wright and was not displaying an operator's licence. On each side of the vehicle, a banner was displayed, depicting the photograph of Beverly Bell at one end and a photograph of DTC Hinchliffe at the other end, with the words "*TWO LYING JUDGES"* in between the photographs. The vehicle was also displaying a notice which claimed that the vehicle was not provided for hire in accordance with the operator's licence regime but rather it was being used in accordance with "*Schedule 1 Part 3 Paragraph (B) 6, 7 & 8 Part IV Paragraph 9"* (which we observe at this stage, in fact relates to vehicles adapted to carry less than eight passengers and which could not be of any relevance to the operation of a 53 seater vehicle). Both Mr Wright and Mr Allanson (who attended the scene) were insistent that the operation of the vehicle did not require an operator's licence.

9. An application was made to the Traffic Commissioner for the return of the vehicle on grounds (b) and (c) of Regulation 10(3) of the Public Service Vehicles (Enforcement Powers) Regulations 2009, namely: (b) that at the time the vehicle was detained, the vehicle was not being, and had not been, used in contravention of section 12(1) of the Act; (c) that, although at the time the vehicle was detained that it was being, or had been used in contravention of s.12(1) of the Act, the owner did not know that it was being, or had been, so used.

10. On 4 December 2012, during the course of a routine roadside check, a Ford Iveco PSV minibus, registration N729 KHT belonging to Mr Wright was

stopped. It was carrying school children and had the same banners displayed on either side of the vehicle and was also displaying the same notice claiming exemption from the requirements of the operator licensing system. The vehicle was impounded. An application was then made by Mr Wright for the return of the vehicle upon the same grounds as set out in paragraph 9 above.

11. The applications were heard in a conjoined hearing by the Traffic Commissioner for the East of England (the Traffic Commissioner for the North West of England having recused herself). Prior to the hearing which took place in July 2013, Mr Wright abandoned his reliance upon the contents of the legal notices displayed in the vehicles and put forward an alternative, but equally unmeritorious argument, based on s.1(4) of the 1981 Act. The TC concluded that Mr Wright knew that both vehicles were being operated in breach of the requirement to hold an operator's licence, Mr Wright having wilfully shut his eyes to the obvious interpretation of the law or at the very least, he had wilfully failed to make reasonable enquiries as to the legal position. Mr Wright's own witness statement suggested a motive to operate which was more connected to a campaign based on a sense of injustice rather than with compliance with the law. The applications for return of the vehicles were refused.

12. Mr Wright and the company appealed to the Upper Tribunal ***Bradley Fold Travel Limited & Peter Wright v Vehicle & Operator Services Agency T/2013/56.*** which upheld the decision of the TC and in respect of his findings on the issue of "knowledge", the Upper Tribunal made a number of observations:

"109.. *Mr Wright is no stranger to the operator licensing regime and has admitted that it was his intention to continue operating vehicles once the company's licence was revoked and he was disqualified for 18 months* (he had admitted to operating vehicles since 16 December 2009). *The justification he has put forward is two-fold. Firstly, the search for justice. Whilst it would appear that he has come to the end of that search within the legal system, despite his contention that an appeal to the Supreme Court is still a prospect, he is (sic) using the vehicles in a livery that is clearly libellous in order to draw attention to himself. Indeed, he is mystified as to why no action has been taken by the judges concerned to sue him for libel. The second justification is that he was mitigating his loss in respect of torts committed by civil servants and others in authority which have resulted in the loss of business, repute and livelihood. The first justification demonstrates that Mr Wright has been operating vehicles with an ulterior motive which has nothing to do with wishing to operate vehicles lawfully. The second justification is a mischievous assertion that does not withstand close scrutiny and to spell it out: one cannot mitigate loss by running vehicles at a loss. Mr Wright's intention from the outset has been to operate the vehicles regardless of whether he could do so lawfully or not.*

110 .. turning to the legal notices displayed on the vehicles, .. the Tribunal is in no doubt that Mr Wright's reliance on this schedule in the notices was designed to obfuscate and confuse, having realised that he had to put forward some justification for operating PSV's without a licence … the Tribunal is

satisfied that the legal notices were displayed to provide a veneer of legitimate authority to operate without an operator's licence when it obviously did not exist… ..
112 At the same time, Mr Wright has over burdened VOSA, the TC and the upper Tribunal with innumerable irrelevant and repetitive submissions and documents. This further demonstrates Mr Wright's cynical intention to manipulate the regulatory processes for his own purposes. This is the clearest case of an operator wilfully shutting his eyes to an obvious interpretation of the law and making a decision to operate regardless of the lawfulness of that operation because of ulterior motives and then attempting to "shoehorn" the operation of the vehicles into a schedule and then a sub-section which he deliberately misinterpreted on both occasions" …
116 … Mr Wright's motivation and conduct in operating vehicles when there was no entitlement do so (and when he was initially disqualified for eighteen months) was mischievous and manipulative .."

13. Mr Wright and the company sought permission to appeal the decision of the Upper Tribunal to the Court of Appeal which was refused. A renewed application to the Court of Appeal was refused by Brunton LJ.

14. On 13 January 2017, Mr Wright wrote a letter addressed to Beverly Bell and copied to DTC Hincliffe. It read:

"*I have received a number of letters, telephone calls and text messages, appertaining to you and your behaviour.*
You will be aware from experience, the event of 1st April 2011 being a prime example, that I prefer to speak truthfully, openly and candidly; that I prefer not to be a one (sic) to talk behind backs; so I have copied for your information, a text message that reads as follows:-

"With Beverly Bells rapid elevation and equally rapid consignment to a short leash, in mind; pass this on to everyone in the transport fraternity:- on 25.09.2009, VOSA prosecuting solicitor John Heaton, whilst in session in the Rochdale Magistrates Court, on learning of the corrupt action taken against Peter Wright & Bradley Fold Travel by Bev and her deputy Mark Hinchliffe; he declared:- "this is not the way it is supposed to be done!!
Heaton then went on to cross the floor becoming a defending solicitor against VOSA.
Soon after, STC Philip Brown vacated his position, apparently for reasons of ill health; but the question is posed :- "did he literally do a John Heaton?
…
Now ask yourself this question:- would you leave a secure cosy well paid Establishment position, especially when you are ill, for the insecurity of an immediate rough and tumble precarious fee earning job, unless you were compromised in some way, such as being surrounded by criminals within the Establishment?"
End of message.
…
PS There is certain to be more chicanery soon, for some of the lunatics still think they are running the asylum!"

15. Approximately two weeks later, by an application dated 2 February 2017, Mr Wright, on behalf of the company, applied for a standard PSV licence which by reason of Mr Wright's answers to question 15a) appeared to require authorisation for two small vehicles with less than 9 passenger seats; two vehicles with 9 to 16 passenger seats and two vehicles of 17 or more passenger seats although he later denied that this was the case. As the TC described it, the form had been "*substantially cross-referenced to a series of addenda and other documents running close to 100 additional pages".* The application was "*unique"* in the TC's experience (and in the experience of the members of the Upper Tribunal who heard this appeal) in that a number of the questions contained in the application had not been answered by Mr Wright, but rather, deleted (questions 15d (f) and (g); questions 15e, f and g). Mr Wright was the nominated transport manager and had recently re-sat and passed the transport manager CPC qualification.

16. On 9 May 2017, Mr Wright was called in to a driver's conduct hearing for Traffic Commissioner Rooney to consider Mr Wright's continued vocational entitlement to drive PSVs by reason of two convictions for driving a PSV for hire or reward without holding a driver's certificate of professional competence ("DCPC"). At the hearing, Mr Wright maintained that he did not require a DCPC because Recital 11 of Directive 2003/59/EC states: "*The Directive should not affect the rights acquired by a driver who has held the driving licence necessary to carry out the activity of driving since before the date laid down for obtaining a CPC certifying the corresponding initial qualification or the periodic training".* TC Rooney found that Mr Wright's reliance on this particular recital (which the TC considered to be genuine) ignored other recitals which clearly indicated that all drivers were required to have undergone their first course of periodic training by 10 September 2013. As Mr Wright had demonstrated that he would continue to drive without a DCPC (having been reported for the first offence by DVSA) and having indicated in evidence that he was not prepared to acquiesce, TC Rooney suspended Mr Wright's vocational entitlement to drive until he was the holder of a DCPC. The TC was concerned about road safety and that it would be unfair on those very many drivers who had invested in their continuing professional development, to allow him to continue and to do so would risk bringing the entire regime into disrepute. Mr Wright subsequently obtained a DCPC.

<u>The public inquiry</u>

17. The TC held a public inquiry on 10 August 2017, to consider the company's application. The company was represented by Roger Allanson, solicitor. Mr Wright attended the hearing with a large cardboard box which had a sign attached to it which read "*Unexploded Bomb".* When asked about this by the TC, Mr Wright stated that the box, which had contained documents, had been in Mr Allanson's office for five years. Mr Wright had placed the sign on it as it was reassurance that "*ultimately justice will be done"*. The contents were a "*metaphorical unexploded bomb".* The TC acknowledged in his decision that "*in fairness"* to Mr Wright, once he was challenged about it by the security

staff, he removed the files from the box and returned it to Mr Allanson's vehicle.

18. At the outset of the hearing, Mr Allanson referred to a number of appeals which Mr Wright contended were on-going: despite Mr Wright now holding a DCPC which he undertook to demonstrate his seriousness about safety, he had lodged a "*neutral"* appeal based upon his view that he had "*grandfather rights"* which exempted him from the requirement to hold a DCPC; as for the Court of Appeal decision upholding the revocation of the company's operator's licence and the loss of good repute of the company and Mr Wright, there was an appeal to the Supreme Court which remained dormant until legal aid was granted; there was an appeal in respect of the impounding decisions to the European Court of Human Rights. We will return to these assertions in due course.

19. The TC summarised Mr Wright's evidence in this way:

"*<u>The operator's plans</u>*

a) The plan, if a licence were granted, was to operate with two coaches from an operating centre that would provide a secure compound. Mr Wright saw the opportunity for a "fresh start" with the licence. He said that previous experience had afforded the opportunity to "look more critically at things".
b) He would be the sole driver at least initially: Mr Wright presently works as a driver for other operators;
c) There would be an arrangement to conduct extensive daily walk round checks, he would seek to have in place procedures to avoid previous problems encountered. A practice of carrying out more than one walk round check daily would be continued;
d) An external maintenance contractor, Roy Braidwood would carry out preventative maintenance inspections and major repairs. Mr Wright described himself as competent "with a set of spanners" but accepted that he had no formal qualifications as a mechanic beyond his "experience";
e) No vehicles were presently in possession: they would be obtained later;
f) He described the amendments made to the application form as his method of addressing the imposition of unfair restrictions on applications made. He claimed he would obey restrictions but would challenge any he believed to be unfair.

<u>Circumstances of the 2008 and 2009 Public Inquiry</u>

g) He said that Bradley Fold came into the spotlight in 2006 at a time when "nothing was wrong" with the maintenance compliance systems then in place. The referral to Public Inquiry at that time was the result of "unwarranted pressure and duress" and what he termed a metaphorical "knee capping" of his business by various agencies, and him suffering vandalism at the operating centre. He accounted for any adverse findings then made to the external pressure he was placed under between 2006 and 2009;

h) He alleged that DTC Hinchliffe had failed to conduct the rehearing that the Upper Tribunal had directed;
i) He did not accept the outcomes of the 2008 or 2009 Public Inquiries:
  a) He described the prohibitions issued at that time as "blatantly false";
  b) He denied that the finding that the bespoke undertakings of the licence had been breached, albeit he now accepted that his failure to install and bring into operation the roller brake testing equipment he had purchased, was such that the brake testing requirement had not in fact been met;
  c) He did accept the finding that the undertaking requiring third party preventative maintenance inspections to be carried out had been undermined by his actions;
  d) He did not accept the evidence of TE Finnegan, whom he claimed had been "selective" in her consideration of drivers' hours data'
  e) He could not accept the description of him as "manipulative", although he claimed to have looked deeper at himself in the period since;
  f) He argued that no reasons were given by the DTC for the finding of lost repute.

Circumstances of the impounding

j) He told me that it remained his contention that without a formal finding in a criminal court of the unlawful operation of a vehicle without an operator's licence that no power existed to impound vehicles;

Circumstances bringing him before a Driver Conduct Hearing

k) He described working for Rojay Services, an operator's licence, which had subsequently been revoked. He described "inviting" prosecution in respect of the absence of a Driver CPC qualification;
l) He did not wish his later decision to take the Driver CPC qualification as being an admission that his stand taken was a wrong one".

The TC's findings

20. The TC found that on balance, the approach of Mr Wright was honestly held and largely transparent. He found that Mr Wright genuinely believes that the positions he takes are justified by his understanding of the legal position. Whilst it seemed to the TC that several of Mr Wright's stances are plainly wrong, have been found to be so by several appeal bodies or fly in the face of a proper reading of the law, taken individually, they are to some degree understandable in the context of the lay or literal view espoused. However, the TC did not note any material change in that regard since the 2009 hearing, although the recent decision to obtain a DCPC, even in the light of the position Mr Wright continued to take about the need for such, could be described as a step forward. There remained a readiness, evidenced in both the impounding and Driver Conduct proceedings, and in the method of completion of the PSV application, to "interpret" the law when obtaining expert informed advice might be preferable.

21. Mr Wright's view was coloured by an enduring belief that from 2006 there has been a conspiracy perpetrated against him at a high level by individuals he was prepared to name and organisations that included DVSA (VOSA as was), HMRC, Companies House, the Post Office, the Legal Aid Agency and civil servants, including Traffic Commissioners. However, he said that such acts no longer troubled him and that DVSA had "changed" (for the better) since. He argued that there had been an acceptance that some conspiracy against him had existed. The TC saw no evidence that was the case.

22. The TC was struck by Mr Wright's "*significantly compulsive desire to stand-up for justice and to object, challenge and campaign, where he considered it necessary"*. There was however, an apparent inability to separate off this desire to stand up for what is right, from the simple expectations of a licence holder within a regulated regime. More than once he adopted the motto ""*Dieu et mon droit" (God and my right) and Magna Carta to demonstrate how important this was to him. He has described how the hearing before me represented his 104th since 2006 in a manner in which suggested he saw this as a badge of honour".*

23. At the outset of the hearing, the TC had sought to focus attention upon the issue of good repute and directed Mr Wright's attention to the decisions of DTC Hinchliffe in 2008 and 2009, which had culminated in the adverse findings as to his repute and that of the company. He offered an approach of contrasting "*then and now"* so that Mr Wright could address how rehabilitation had been effected. However, the TC was not able to discern any substantial change. He took into account the passage of time, since it had been 8 years since Mr Wright's repute had been lost. Whilst time passing neither increases or reduces the likelihood of repute being regained, the longer the period that passes, the greater the opportunity to show manifest change. Someone who is described as "*a man that the Traffic Commissioner can (not) do business with anymore"* is likely to need to move their position in a significant fashion. Over a period as long as eight years, many applicants are able to show from their other experiences, that renewed trust and confidence could be had in them, despite not holding a licence. Those who had remained inside the industry, albeit in what was probably a more peripheral role could often evidence compliance in that allied setting, which could carry additional weight.

24. The TC listed the positives as:

a) There was no evidence before him as would suggest that the 18 month period of disqualification imposed by DTC Hinchliffe was breached;
b) The fact that Mr Wright had passed afresh the transport manager CPC qualification which was significantly positive not only in terms of his refreshed competence but also, it might demonstrate his commitment to compliant operation;
c) Taking the DCPC, having previously been unprepared to do so;
d) Mr Wright's assertions that he had been afforded an opportunity to think about things and that he would be compliant.

25. The negatives were:

a) Mr Wright continues to maintain in most respect that the circumstances that led to Bradley Fold's and his own loss of repute were down to external factors not of his making;
b) There is little recognition of any of the criticisms of his previous practice as an operator;
c) There is little acknowledgment of the regulatory process itself, in a number of cases it would remain Mr Wright's contention that he has succeeded in achieving positive outcomes, when the evidence might suggest otherwise;
d) The manner of completion of the application form was in itself challenging and did not increase confidence that there might be a strictly compliant attitude;
e) Further adverse findings detracting from the repute of both Mr Wright and Bradley Fold were recorded in the impounding proceedings when vehicles were found to be operated by him and the company unlawfully;
f) Further adverse findings detracting from the repute of Mr Wright were recorded in proceedings involving his vocational driving entitlement, raising concerns about ongoing compliance with relevant legislation regarding driving whether by him or any employee of the company;
g) There was evidence of a continuing readiness to allow his perception of the need for justice to distract his judgement and decision making e.g. in the "stunt" in bringing the "unexploded bomb" to the hearing;
h) The TC did not derive any reassurance as a result of Mr Wright being the sole director of the company and therefore the probable absence of any direct challenge to the guiding mind of operations, in terms of his approach to licence compliance;
i) His evidence attitude towards some DVSA staff does not inspire confidence in terms of compliance.

26. The TC referred to the decision in the appeal of *Aspey Trucks Ltd 2010/49* which made clear that the role of a Traffic Commissioner as the gatekeeper to the haulage industry, when considering new applications. This applied equally to PSV operation and those who are allowed entry must satisfy the Traffic Commissioner of their good repute. In considering that question, the Traffic Commissioner needed to be awake to what the public, other operators, and customers and competitors alike would expect of those permitted to join the industry that they will not blemish or undermine its good name, or abuse the privileges it bestows.

27. The TC concluded that the requirements were not met as he remained to be satisfied that Mr Wright had regained his good repute and thereby that of the company. Mr Wright had changed little since he lost his repute and it was no less likely today that he would seek to challenge what he regarded as unfair. The TC struggled to find that Mr Wright had learnt from the past because there was manifest denial that anything was wrong. Repute was not defined in the legislation but the TC was satisfied that the circumstances of the impounding of Mr Wright's and the company's vehicles and Mr Wright's appearance before a driver conduct hearing were matters going directly to repute. These matters did not increase the TC's confidence and trust, quite the contrary. As a result of his finding that Mr Wright had demonstrated that

he had regained his good repute, the company lacked professional competence. The application was refused.

The Appeal

28. The appeal bundle prepared by the Tribunal for the purposes of this appeal (which contained a considerable amount of material which had been placed before the TC by Mr Wright) ran to 402 pages. A week before the hearing, Mr Wright filed with the Tribunal a further bundle which ran to 515 pages, although it transpired (only after it had been copied and sent to the Tribunal members) that between a seventeen page skeleton argument and a bundle of authorities, Mr Wright had "sandwiched" another copy of the Tribunal's appeal bundle and had highlighted those sections of the documentation which he considered to be helpful to him. Much of the documentation was irrelevant and was not relied upon by Mr Wright.

29. Immediately prior to the hearing, the Tribunal provided to Mr Wright, a copy of Schedule 3 of the 1981 Act which sets out the matters to which a Traffic Commissioner should have regard when considering good repute. We also provided a copy of the Upper Tribunal's decision *Catch 22 Bus Ltd (formerly Oakwood Travel Services Ltd & Phillip Higgs v Secretary of state for Transport T/2016/72.* We gave Mr Wright an opportunity to read both documents and for Mr Allanson to provide Mr Wright with any legal advice he thought it appropriate to give as a solicitor acting as a Mackenzie Friend.

30. At the outset of the hearing, Mr Wright began by reminding us of his dyslexia which causes him to "*think in pictures*" and which may cause him not to look directly at the Tribunal when addressing us. We took this into account although Mr Wright did not appear to have any difficulty in addressing the Tribunal directly.

31. Mr Wright considered that his appeal should be a "*simple matter".* He submitted that a Traffic Commissioner cannot revoke something that is not defined in law and to which there is a statutory defence, namely The Bill of Rights Act 1688, which must be followed. He did accept that there might be situations which entitled a Traffic Commissioner to find a loss of good repute without a conviction and he gave the example of the case of *Philip Higgs (supra)*. He asserted that the 1688 Act was "*repeated in Schedule 3"* of the 1981 Act. He referred to paragraph 1(3) of the schedule which reads:

"*A traffic commissioner shall determine that an individual is not of good repute if he has –*
(a) More than one conviction of a serious offence; or
(b) been convicted of road transport offences"

Mr Wright's approach was "*two pronged"* – neither he nor the company had any relevant convictions. The second "*prong"* related to the TC's authority to consider "*all relevant evidence"* as set out in paragraphs 1(1) and 1(2) of the Schedule.

32. Mr Wright referred the Tribunal to *Woolmington v DPP (1935) UKHL 1* and in particular the passage which reads "*no matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained."* Mr Wright accepted that at paragraph 101 of the Tribunal's impounding decision *(T/2013/56) (supra)* the Tribunal determined that the Woolmington case and the "*golden thread"* principle were not applicable to the Traffic Commissioner's jurisdiction, however Mr Wright submitted that the Tribunal should re-visit our determination in that regard. "*Common law*" related to both the civil and criminal jurisdictions. In support of this submission, Mr Wright referred the Tribunal to the case of *Duport Steels Ltd v Sirs (1980) 1 WLR 142* and in particular, the following extract from the judgment of Lord Scarman:

"If Parliament says one thing but means another, it is not, under the historic principles of the common law, for the courts to correct it. .. We are governed not by Parliament's intentions but by Parliament's enactments and in the field of statute law the judge must be obedient to the will of Parliament as expressed on its enactments. In this field Parliament makes, and un-makes the law; the judge's duty is to interpret and to apply the law, not to change it to meet the judge's idea of what justice requires".

We should state at this stage that Mr Wright has not put before us any cogent argument as to why our previous determination about the applicability of Woolmington to civil proceedings was wrong and as a result, paragraph 101 of our previous decision remains our interpretation of the law. Woolmington is of no relevance.

33. Mr Wright then turned to the Senior Traffic Commissioner's Statutory Document No.10 issued on 14 December 2015 and entitled *"The principles of decision making & the concept of proportionality".* Mr Wright "*applauded"* the Senior Traffic Commissioner "*for what she was trying to do"* but if one ignores *"the foundation stones of the law, the roof falls in".* The Statutory Document was *"95% good stuff"* but it fell down, for example, in the case of driver CPC qualifications. Mr Wright then referred to the case of "*Craig Andrew Watts"* a High Court case in which Mr Watts lost the argument that he did not require a DCPC. It was found that the Magna Carta was of no relevance and that the Articles of the Directive need not follow the Recitals.

34. As for the DCPC, in requiring a driver with a vocational driving licence to undertake periodic training then that is a denial of the driver's vocational licence and that is a breach of the Bill of Rights.

35. When asked to explain the connection between the Statutory Document and the requirement that vocational drivers must hold a DCPC, Mr Wright submitted that the Statutory Document was based on the "*unsung foundations and statutes and violates those statutes because it is contradictory to the Human Rights Act, the Bill of Rights, Woolmington and Diplock* (who gave the leading judgment in *Duport Steels Ltd v Sirs (supra)).* Mr Wright then conceded that the case of Craig Andrew Watts was of no relevance to the

issues before the TC as it was a Magistrates Court case. We are satisfied that Mr Wright's submissions in relation to the Statutory Document were nonsensical. He did not in fact take the Tribunal to any part of the document which might have been contrary to any statute or legal principle.

36. Mr Wright then returned to the case of ***Phillips Higgs (supra)*** which he described as "*another example"* as it was established that *"all he had done was expose an unsavoury truth".* When asked to state what the *"unsavoury truth"* was, Mr Wright was unable to answer. He then informed the Tribunal that he had in fact discussed with Mr Higgs "*how far he could go"* in his targeting of the Senior Traffic Commissioner, Beverly Bell, which had resulted in a Harassment Notice being served upon Mr Higgs. Mr Wright had himself been served with a Harassment Notice in respect of his alleged conduct towards the Senior Traffic Commissioner.

37. Mr Wright then turned to the issue of proportionality. He quoted from his skeleton argument:

"*The Appellant also recognises that Mr Simon Evans, the incumbent Traffic Commissioner for the North West, is guided by the Statutory Documents, merely follows what has gone before, both in procedure and his approach to this case, in the belief that what had been documented and processed was both factually correct and constitutionally lawful".*

Mr Wright went onto submit that good repute and "*competence"* were not the same thing as one can have the former but not the latter and vice versa. How could he establish that he was good repute? He noted that "*a baby is born innocent"* and posed the question: "*what am I guilty of which makes me not of good repute?"*

It was pointed out to Mr Wright that by virtue of paragraphs 1(1)(b) and 1(2)(b) of schedule 3 of the 1981 Act, the TC was entitled to take into account of "*such other information as the commissioner may have as to previous conduct"* in whatever capacity, in relation to the operation of vehicles of any description in the course of a business and that the TC's authority to do so went beyond considering convictions. Mr Wright contended that in fact, he had "*got my good repute back because I was only disqualified for 18 months".* It was pointed out to Mr Wright that the end of the period of disqualification did not mean the return of his good repute, that was something for him to establish.

38. Mr Wright then argued that in fact the question of whether he had actually lost his good repute had not been resolved as there were on-going appeals. It was at this stage, that we went through the evidence to establish whether there had been any documentation before the TC to show that there were any outstanding appeals. First of all, there was no evidence with regard to an appeal, whether to the Crown Court or the Divisional (Administrative) Court concerning Mr Wright's contention that he did not require a DCPC. As for the "dormant" appeal to the Supreme Court in respect of the Court of Appeal decision upholding the finding that Mr Wright and the company had lost their

good repute, there was no evidence before the TC that an application for permission to appeal had been made to the Court of Appeal within 28 days of the judgment in accordance with paragraph 11(1) of the Supreme Court Rules 2009 or otherwise. Such an application is a pre-requisite for seeking permission from the Supreme Court as per paragraph 10(1)(2) of the Rules. There is no evidence that permission has been sought from the Supreme Court. Whilst there is a provision for the commencement of proceedings in the Supreme Court to be suspended pending an application for legal aid, the provision (which is contained in paragraph 8.12.3) can only be relied upon if the Registrar of the Supreme Court and the other parties have been notified in writing that an application for public funding or legal aid has been made and proof of such an application must be provided to the Registrar. Further, by virtue of paragraph 8.12.4 the notification of the application must be given far enough before the expiry of the original time limit to ensure that the appeal is not dismissed as being out of time. There was no evidence before the TC that any of these steps had been taken.

39. There are some documents in the bundle relating to legal aid. There is the 14th and final page of an application for legal aid which is dated 4 July 2010. The remainder of the document is not within the bundle. There is nothing on the face of that page to indicate what the application relates to. There is also a Notice that legal aid has been granted which is dated 3 October 2014, so a little over four years after the above application. The purpose of the legal aid is stated to be "*to be represented on an application before the High Court under section 23(2) Arbitration Act 1950 to set aside an arbitration award against the opponent".* The limitation is "*to petition the Supreme Court for permission to appeal the judgment of the Divisional Court and, if successful, hereafter to prosecute the appeal in the case between the client and the opponent".* On 7 August 2015, the limitation was replaced with the following "*to petition in the Supreme Court for permission to appeal the judgment of the Court of Appeal .."* although the certificate continued to refer to section 23(2) of the Arbitration Act 1950 which had in fact been repealed. On 15 June 2016, Mr Allanson wrote to the Legal Aid Agency requesting that the certificate be amended to cover an appeal from the decision of the Court of Appeal in respect of an Order dated 18 June 2010 (the Court of Appeal decision). There is no further correspondence produced by Mr Wright. In the absence of any evidence that Mr Wright has either an active appeal before the Supreme Court (seven years after the Court of Appeal decision) or an appeal that is suspended pending the grant of legal aid, it cannot be argued that the issue of Mr Wright's loss of repute remains unresolved.

40. As for the appeal to the European Court of Human Rights in relation to this Tribunal's decision on the impounding case, there is within the bundle an incomplete application to the ECHR as questions 39 and 41 have not been answered and the date and signature sections in the declaration are blank. There is no evidence in the bundle that the application has been lodged within the six month time limit if at all and/or whether the application has been accepted and is on-going. A little under four years has now passed since Brunton LJ refused Mr Wright's application for permission to appeal to the Court of Appeal on 24 July 2014. In the circumstances, in the absence of

evidence to the contrary, it cannot be argued that the issues arising out of the impounding of the vehicles remain unresolved.

41. Having indicated to Mr Wright that this was our view (although not in the detail as set out above), Mr Wright submitted that he failed to understand why the TC made the decision that he did. We accordingly went to the TC's balancing exercise. In relation to the positives, Mr Wright pointed out that the TC had not taken account of the fact that there were no convictions arising out of the impounding of the vehicles. He then returned to the Bill of Rights Act which provides that *"all Grants and Promises of Fines and Forfeitures of particular persons before conviction are illegall and void".* The dictionary definition of "forfeit" was "*to lose the right to by some fault or crime: to confiscate: to penalise by forfeiture: to give up voluntarily (a right): that which is forfeited: a penalty for a fault: a fine: something deposited and redeemable".* The thing forfeited in Mr Wright's case was the loss of his right to be a transport manager. The basic building blocks of the law had been ignored.

42. Taking the points that Mr Wright made in the order he raised them about the negatives which the TC took into account in his balancing exercise, Mr Wright considered that the TC contradicted himself in the point at paragraph 24(f) above because Mr Wright did in fact obtain a DCPC qualification even though he did so because he considered that he did not have a choice. In refusing to obtain a DCPC in the first place, he was not railing against health and safety: "Dieu et mon Droit". His refusal to obtain a DCPC was the only way he could challenge the law because he could not afford judicial review. Some might class his conduct as "*lawful rebellion".*

43. As for paragraph 24(i) above, Mr Wright had always been co-operative and compliant with DVSA. He modified that assertion by stating that he had not always been compliant. There were exceptional circumstances with three "S" marked prohibitions when there was nothing wrong with the vehicles.

44. As for paragraph 24(g) above, Mr Wright considered TC's description of him bringing the box marked "unexploded bomb" to the hearing as a "stunt" to be uncalled for. The Tribunal probed Mr Wright about this. We pointed out that the hearing took place shortly after the Manchester Arena bombing when the staff in a public building would be particularly sensitive. Mr Wright responded: "*Where is the English sense of humour in this state of adversity?"!* When the Tribunal questioned that response, Mr Wright stated that the box represented the sense of humour he shared with Mr Allanson.

45. Turning then to the manner in which Mr Wright had completed the application form (paragraph 24(d) above), he referred to paragraph 10 of his skeleton argument. The tone in which the TC raised this issue caused Mr Wright to infer that no deletions on the application form were possible and that the deletions he had made were impudent. Mr Wright considers that the items deleted were "*ultra vires by reason that the wording of the Form in the relevant section, is by coercion, the mandatory forfeiture of rights granted by a higher authority, without wrong doing being established by a Conviction; "permission" being the operative and violating term specified".* Under s.79A of

the 1981 Act, a standard licence holder can use vehicles constructed with 8 seats or less without requiring a licence although the operation of those vehicles must form only a minor part of the business. By completing the form as required by the TC, Mr Wright would be giving up the right to operate vehicles without further permission and was otherwise giving up his rights. It was of concern to Mr Wright that those operators who had held an operator's licence for some time, had not agreed to these undertakings and that was unfair, although it was pointed out to him that in all likelihood, they would have been asked to sign up to any new undertakings on their five yearly licence review.

46. Mr Wright understood the TC's concerns about the way Mr Wright had answered the questions about operating limousines because of the problems that the operation of those vehicle types by unlicensed operators were causing. However, the answer was to impose a duty on an operator to notify the TC if they are planning to operate that type of vehicle regularly. It was pointed out to Mr Wright the very important safety implications of operating limousines which were not authorised under an operator's licence for example, the requirement to have a certificate of initial fitness which imported limousines do not have. He understood the point but went onto to argue that there was no definition of limousine. As for question 15(g) which reads: "*If you intend to operate limousines or novelty type vehicles which have nine passenger seats or more do you agree to the following additional undertaking being specified on your licence (if granted)?"* he had failed to answer the question and had then struck out the undertaking sought which read "*Only limousines and novelty type vehicles with nine passenger seats or more and issued with a valid Certificate will be used under the licence".* He had struck out the undertaking sought because it would have meant that if granted a licence, he could not operate coaches and buses if he also operated limousines and novelty type vehicles. The Tribunal pointed out that his interpretation of the undertaking was "*nonsense"* and it was only when the Tribunal inquired as to whether Mr Allanson agreed with his interpretation, that Mr Wright readily accepted that he was wrong. He had nevertheless indicated that he would operate compliant vehicles and he had only completed the form on the basis that he did not jeopardise his "*rights"* under the 1981 Act.

47. Mr Wright told the Tribunal that he had attended 106 hearings and had always told the truth. Neither had he ever deceived anyone. Who had he manipulated? It was inconceivable that someone who told the truth and who had been described as a whistle-blower could be viewed in that way.

48. Mr Wright concluded by stating that he had unblemished career of 30 years in transport management and had been commended by Hugh Carlisle QC (the President of Transport Tribunal) in 2007. He had throughout *"his journey"* since 2006 and the previous 105 hearings sought to bring to the attention of The Crown, contentious issues some of which had been highlighted in the appeal. As of necessity, Mr Wright defends his democratic birth rights guaranteed in law by *Dieu et mon droit,* by Clause 29 Magna Carta 1297 and the Bill of Rights Act 1688, all reinforced by subsequent statutes, precedents

and the common law of the land. The TC's balancing exercise was wrong and was not proportionate.

Discussion

49. Our starting point is the same as that of Mr Wright at the outset of his appeal: this is a simple matter, although we are satisfied that it has been made more complicated by Mr Wright's confused presentation and his misguided approach to the interpretation of statute and case law. Mr Wright and the company lost their good repute in 2009 and that remains lost in respect of both parties until such time as they can satisfy a Traffic Commissioner upon application for a licence (or in the case of Mr Wright, upon his nomination as a transport manager) that their good repute has been regained. As a consequence of that simple position, Mr Wright's reliance upon the Bill of Rights and in particular references to "forfeited rights" are of no relevance to his appeal. The TC's determination was not that Mr Wright and the company had lost their good repute but rather they had failed to establish that it had been regained.

50. Mr Wright is under the impression that the 1981 Act bestows upon him various "rights", for example, to operate certain types of vehicle. This interpretation of the 1981 Act is misconceived. It is for an applicant for a licence to establish that they satisfy the various requirements for the holding of a licence. There is no right bestowed under the 1981 Act until a licence has been granted. It is only at that stage, that a licence holder has some rights with regard to the way in which their licence is regulated. As a result, Mr Wright's approach to the completion of the application form was wholly misconceived. It is not for him to "cherry pick" the undertakings that are required of all operators who wish to operate certain types of vehicles. All the required undertakings have a solid purpose behind them and any operator applicant who wishes to be compliant with the regulatory regime is content to sign up to the undertakings required of them.

51. As for good repute, the fact that there is no statutory definition of the term, is irrelevant as Schedule 3 makes clear the nature of conduct that TC's can have regard to and of course each decision is fact sensitive. The Schedule confers upon a TC, authority to have regard to a wide breadth of evidence concerning previous conduct of an individual or officers of a company in whatever capacity relating to the operation of commercial verhicles. It is simply unarguable that a TC must find that convictions have been recorded against an individual before an adverse finding of good repute can be made.

52. It follows that the TC was entitled to take account of the matters he did when undertaking his balancing exercise and indeed, could have gone further, by having regard to the letter of 7 January 2017 (set out in paragraph 14 above) as demonstrating Mr Wright's continued hostility towards those who regulate the transport industry which does not inspire confidence that Mr Wright will be compliant as an operator and transport manager in the future. The "PS" at the end of the letter speaks volumes: "*There is certain to be more chicanery soon, for some of the lunatics still think they are running the asylum".*

53. The TC's balancing exercise was both proportionate and reasonable and we cannot find fault with any of the individual findings in the "negative" list. In particular, we consider the TC's description of the "unexploded bomb" box as a "stunt" to be a determination that he was entitled to make as was his ultimate determination that Mr Wright had failed to establish that he had regained his good repute.

54. To conclude, we are satisfied that this is a case where neither the law nor the facts impel us to interfere with the TC's decision as per the Court of Appeal decision in *Bradley Fold Travel Ltd & Peter Wright v Secretary of State for Transport (2010) EWCA Civ. 695* . For the avoidance of doubt, insofar as this Discussion does not address all of points made by Mr Wright during the course of the appeal hearing, we can confirm that all of his points were without merit. The appeal is dismissed.

Her Honour Judge Beech
5 April 2018