

Neutral Citation Number: [2018] UKUT 0167 (AAC)

Appeal No. T/2017/67

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

**IN AN APPEAL FROM THE DECISION OF
Nick Denton, Traffic Commissioner for
THE WEST MIDLANDS dated 7 September 2017**

Before:

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

Appellant:

DAVID RANDLE

Attendance:

For the Appellant: In person

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

Date of hearing: 10 April 2018

Date of decision: 14 May 2018

DECISION OF THE UPPER TRIBUNAL

IT IS HEREBY ORDERED that the appeal be DISMISSED

SUBJECT MATTER:- Good repute of transport manager. Whether finding of loss of good repute proportionate. Whether period of disqualification of two years was proportionate.

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

REASONS FOR DECISION

1. This is an appeal from the decision of the Traffic Commissioner for the West Midlands (“the TC”) made on 7 September 2017 when he found that Mr Randle had lost his good repute and that he should be disqualified for a period of two years under Schedule 3 of the Goods Vehicles (Licensing of Operators) Act 1995 although the TC may have meant Schedule 3 of the Public Passenger Vehicles Act 1981.

The Background

2. The background to the appeal can be found within the papers and the TC’s written decision. Consult Sol Limited (which traded as Williams Coaches) was granted a PSV operator’s licence with an authorisation of eight vehicles in December 2011. Craig Shepherd was the sole director and Ian Shepherd was the transport manager. On 27 June 2016, the TC at the time considered a variation application to increase the vehicle authorisation to twelve following receipt of an unsatisfactory maintenance investigation. In the result, the licence authorisation was reduced to three and Ian Shepherd was found to have lost his good repute and was disqualified for six months. Mr Randle was nominated as transport Manager on 4 August 2016 undertaking to work with the company for 8 hours a week.
3. The company nevertheless continued to operate six registered services and as a result, Traffic Examiner Kathrine Cox (“TE Cox”) was concerned as to how compliant operation could be achieved with just three vehicles. TE Cox carried out observations on five occasions between 23 September and 23 November 2016 of vehicles operating two school services under contract to Consult Sol Ltd and did not observe any vehicles which appeared to be operated by that company.
4. On 19 September 2016, TE Love was on duty at Wobaston College when she observed a vehicle which was in the livery of Trent Travel Ltd although it was displaying a disc in the name of Consult Sol Ltd. TE Love spoke to David Shaw, the director of Trent Travel Ltd and he confirmed that whilst his company held an operator’s licence authorising one vehicle, he had been awarded two school contracts, requiring two vehicles. As a result, a director of Consult Sol Ltd had offered to lend him a disc. There was no hire agreement between the two companies. He had obtained the second contract with the intention of providing work to his son who was the driver of the vehicle when it was stopped. Mr Shaw stated that he would not use the disc any further.
5. On 9 February 2017, TE Cox, TE Love and Vehicle Examiner (“VE”) Jones visited the operating centre of Consult Sol Limited at The Garage, Redbrooke Lane, Rugeley. There was no one present from the company but it was recorded that four vehicles in the livery of Williams Coaches were displaying licence discs in the name of Bennetts Travel Ltd. VE Jones examined a

vehicle RKZ8286 which was in the livery of Williams Coaches and issued an immediate prohibition for absence of brake fluid. A request for the production of records made to Craig Shepherd was not complied with and TE Cox had been unable to speak to him about her findings.

6. As a result of the above visit, TE Cox immediately commenced an investigation into Bennetts Travel Ltd which had a vehicle authorisation of six vehicles although seven discs had been issued. Whilst waiting for a member of staff to contact either the director or transport manager of Bennetts, TE Cox observed that there were two desks in the office, one of which appeared to be for Craig Shepherd and the other for Mr Langston, the director of Bennetts. Further, tachograph analysis reports which were in the name of Consult Sol Ltd covered vehicles which were seen to be displaying the discs of Bennetts. None of the infringement reports which were dated between 17 October 2016 and 6 February 2017 had been signed by either the drivers or the transport manager. A member of staff then showed TE Cox three discs issued to Consult Sol Ltd which were being kept in the safe (rather than being used on vehicles).
7. On 28 February 2017, Mr Langston, the director of Bennetts attended a pre-arranged meeting with TE Cox and TE Love. He told the officers that he had found himself in a position where he could buy a company and work for himself. He purchased Bennetts in 2016. Shortly thereafter, he heard that Consult Sol Ltd was looking to sell its PSV business and so Mr Langston decided to move his operating centre to that of Consult Sol Ltd in Rugeley as it was nearer to his home. When he originally bought the company, Mr Brian Bennett had agreed to stay on as transport manager until Mr Langston found a replacement (Mr Randle was nominated on 4 July 2016 with a commitment to work for 8 hours a week). Mr Randle had then been taken ill and had been unable to fulfil his functions and then Mr Langston had become ill and so the functions of transport manager had not been fulfilled at all. Once Mr Langston had received correspondence from TE Cox, Ian Shepherd had agreed to become transport manager and Mr Langston had left him to complete the forms (being unaware that Ian Shepherd had lost his good repute).
8. As for the work carried out by Bennetts' vehicles, Mr Langston stated that he operated three vehicles and had two school contracts. Craig Shepherd had asked him to undertake some ad hoc private hire work that had already been booked by Consult Sol Ltd. He could not say how many jobs his company had covered for Consult Sol and he could not say when the bookings were taken or when the last one was scheduled. He accepted that Craig Shepherd organised the vehicles and the drivers and he received a fee from Consult Sol for the use of his discs. One of Consult Sol's vehicles was on hire to Bennetts for the company to carry out "the Amazon contract" which had been awarded to Consult Sol.
9. It was noted by TE Cox that Bennetts Travel was using Consult Sol's operating centre when it was not specified on Bennetts' licence; all seven discs issued to Bennetts were being utilised although the company itself only required three; there were considerable deficiencies in the records produced

by Mr Langston without explanation; Bennetts did not undertake its own tachograph analysis or contribute to the cost of the analysis provided by Consult Sol and it was the latter company which undertook all of the driver and vehicle downloads.

10. In the meanwhile, on 20 December 2016, the Central Licensing Office received a letter from Mr Randle notifying his resignation as external transport manager to both Consult Sol and Bennetts. He did not give any reasons for doing so or raise any concerns that he may have had about the manner of operation of either company.
11. By separate call up letters, the two companies and Mr Randle were called to a public inquiry to be held on 15 August 2017. In response, Mr Randle wrote to the Office of the Traffic Commissioner (“OTC”) stating:

“.. I was introduced to Mr Shepherd by mutual friend (sic). Mr Shepherd was keen to offer me the position as external transport manager. He explained why his last transport manager was no longer employed and he shared the information why the company had had its operator licence curtailed.

I explained to Mr Shepherd what services I could offer him, I would implement a rigid system in connection with tachos, downloads, daily defects, and maintenance, drivers’ hours and weekly rest. I would not be involved in the day to day running of the company as it was his responsibly (sic), all the above was in order and he followed the system of control, I was only compliance related after the initial set up. Mr Shepherd did agree and was keen to look at ways to improve in his area of the business.

August, was very quiet with only one contract running. I spent quite some time with Mr Shepherd looking at previous documentation before my involvement, significant short falls were found and I addressed this with him and how more effort was required by his staff and himself. I collated a driver hand book (see attached) and diary system that I wanted the drivers to use to record their duties and any infringements. Mr Shepherd needed to start to plan at least one but preferably two weeks in advance as September was approaching and school contracts starting and rest needed to be rostered. Mr Shepherd had more casual approach (sic) to issuing work i.e. one or two days in advance.

September, I had difficulties getting to see documents tachos etc, as Mr Shepherd keeps them at his home office not at the business premises. I spoke to Mr Shepherd in relation to more drivers were required (sic) and tried to arrange access to the office.

October, I had extreme difficulties getting in contact with Mr Shepherd, so I wrote to him asking for a meeting and him to respond to my questions within 7 days (see attached letter)

November, I made several attempts to see Mr Shepherd and reiterate the importance of the above.

December, I resigned the situation was getting far too stressful to deal with my ongoing health condition.

To conclude I could not act in a professional manner for Mr Shepherd, constantly chasing and being ignored was not part of the agreement ...”

Mr Randle's letter referred to significant ill health suffered by him in relation to his heart. He concluded that he would not attend the public inquiry in August as he would be on holiday and he could not be involved in stressful situations. He continued:

"If you want my CPC qualification I am quite happy to surrender it to you, with my limited life expectancy soon they will be worthless pieces of paper anyway, although losing my good repute in this situation I feel would be an injustice as I feel I was unfairly treated by Mr Shepherd."

It is of note that in this letter, Mr Randle did not refer to Bennetts Coaches at all or his interaction with Mr Langston.

12. Mr Randle attached to the letter:

- a) a document entitled "Williams Coaches - Driver's Handbook" (there is also in the bundle, an identical document relating to Bennetts Travel);
- b) a letter to Craig Shepherd dated 31 October 2016 (which Mr Shepherd denies having received) which was entitled "Williams Coaches and Bennetts Travel" and read:

*"I have tried to contact you on a number of occasions.
I (sic) after being appointed to act as your Transport Manager for both of the above companies, I have a few concerns that need to be addressed.
I need access to your daily defect records and tachographs. Making these available for inspection weekly is an important part of my commitments to you as Transport Manager.
Also I need to see your Drivers rota/schedule to ensure correct/daily/weekly rest is being taken in accordance to EU 561/2006.
The owner/manager should ensure correct weekly drivers rest is taken by all drivers and they are kept legal.
The diary system and collation of returned downloads register needs to be updated weekly. This also needs to be available for inspection by myself.
I am also confused as to why there seems to be discs being swapped from vehicle to vehicle, an explanation and some clarity needs to be given on this matter as I understand it Bennetts have 6 discs and three vehicles and Williams have 5 discs and 5 vehicles after curtailment.
As I have pointed out to you about my health condition, some weeks I will not be able to attend the site, if this happens I will make the absent time up by the end of each month.
...
I feel we need to have a face to face meeting to clear up the above and set some clearer guidelines as to how we can move forward in a more professional manner.
Can you let me know when a suitable time is convenient with you .. in the next 7 days."*

- c) Two letters in identical terms dated 12 December 2016 addressed to Bennetts Travel Ltd and Consult Sol Ltd respectively. They read:

“Please accept this letter as my formal resignation.

I am finding it difficult to attempt to implement any type of control as external TM.

I wrote to Craig/you last month with a number of items that need addressing.

It appears other transport matters within the company take president (sic) over the coach side.

Also causing concern to me is the lack of planning with driving hours/weekly rest.

I explained my duty to the company is to stand as CPC holder and check the compliance, and I am not involved with planning or the day to day running of the company although I have given help in this area. ...”.

13. Craig Shepherd also indicated that he would not be attending the public inquiry. In an undated letter to the OTC, he asserted victimisation of him by the DVSA although he accepted that he had lent a vehicle disc to Trent Travel Ltd. He did not refer to the operation of his vehicles whilst displaying the discs of Bennetts Travel although he did refer to the fact that the latter was operating from his operating centre. As for Mr Randle, he asserted that it was Mr Langston who identified Mr Randle as a suitable transport manager for both operations. However, within two months, Mr Randle had only been present at the operating centre for a very limited time on three occasions. Whilst the vehicle documents were kept at Mr Shepherd’s home, that did not prevent Mr Randle from working on them as Mr Randle collected his pay cheque from the house. Mr Shepherd was “*astonished*” to learn that Mr Randle maintained that he had sent him a letter dated 31 October 2016 raising concerns about his vehicle operation and he had certainly not received it. The reason why Mr Randle resigned was because Mr Shepherd refused to pay his invoices when he had not been undertaking his responsibilities.
14. The public inquiry took place as scheduled on 15 August 2017. Mr Langston attended and told the TC that Mr Randle did not fulfil his role as transport manager following a heart attack which he suffered one month into his contract. At its conclusion, the TC made the following findings:
 - i) Consult Sol Ltd: having had its operator’s licence reduced to three discs, it continued to operate using the discs of Bennetts Travel. It also lent one of its discs to Trent Travel Ltd and a vehicle had received an immediate prohibition for no rear brakes. The licence was revoked and Craig Shepherd was disqualified for an indefinite period under s.28 of the Transport Act 1985 (“the 1985 Act”);
 - ii) Bennetts Travel Ltd: there was an absence of financial standing in addition to the operator lending its discs to Consult Sol Ltd to enable the latter to avoid the effects of the licence curtailment imposed upon it in July 2016. Consult Sol was the de facto operator of the vehicles displaying the discs of Bennetts Travel. The licence was revoked and Mr Langston was disqualified for two years under s.28 of the 1985 Act;

- iii) David Randle: did not exercise continuous and effective management of the transport activities of either business. He was absent as a result of illness for almost the whole of his period as transport manager for both companies. A previous absentee transport manager had been one of the issues at the public inquiry in July 2016 which had resulted in Consult Sol's licence being curtailed. He had been the nominated transport manager when Consult Sol was using Bennett Travel's discs. There was no evidence that periodic maintenance had been carried out or that drivers' hours were being monitored for compliance whilst he remained in post with either company. Further, Mr Randle's resignation letter to Mr Langston made clear that Mr Randle considered Craig Shepherd to be the prime mover in the operation of the vehicles registered to Bennetts Travel. In the circumstances, Mr Randle had lost his good repute and by reason of his failure to attend the public inquiry, he was disqualified from holding the position of transport manager for an indefinite period.
15. Upon receipt of the letter notifying Mr Randle of the TC's decisions, Mr Randle wrote to the OTC taking issue with the suggestion that he had been largely an absentee transport manager for the companies and he requested that the TC convene a second public inquiry which took place on 4 September 2017. At that hearing, Mr Randle insisted that apart from two periods of illness lasting 24 hours and 48 hours and a holiday lasting four days, Mr Randle was at the disposal of the companies and he produced a letter from Terry Wilson, a driver (the letter does not say with whom). It informed the TC that Mr Wilson saw Mr Randle at the operating centre of Williams Coaches weekly, to the best of his knowledge and stated that Mr Randle's job was "*hampered by a non co-operative owner, Mr Shepherd*". Mr Randle also produced a letter from Lois Borton who used to work at the operating centre as Base Operator for Mr Shepherd's taxi firm. She considered that Mr Randle endeavoured to maintain his role as a transport manager but was facing an impossible task once all documentation was removed from Mr Randle's office along with his computer. Mr Randle also produced an unsigned and undated letter from Craig Shepherd stating that he thought that Mr Randle's disqualification was "*harsh*" when compared to the shorter period of disqualification Ian Shepherd had received in July 2016. The letter went on to state that Mr Randle's "*continuous illness*" meant that there were times when he was unable to attend meetings but he did make the time up and it was Mr Randle who had found an alternative maintenance provider and had undertaken some driver training. Mr Randle had not been aware of the lending of a disc to Trent Travel.
16. Mr Randle told the TC that whilst he considered that the implementation of systems would be relatively straightforward in the case of Consult Sol (by reason of its recent curtailment) that had not been the case. Mr Shepherd did not take his advice as he was more of a taxi operator. Mr Randle asserted that having provided the Driver's Handbook, it was for Mr Shepherd to implement its contents as Mr Randle was "*only an external transport manager*". He was only there to check compliance. In the eight hours that he worked each week (we note that on each TM1 form he had indicated that he

would work a total of 8 hours each week for each company), he gave advice and was “*sorting out the mess*” from the previous transport manager. At first, business was quiet because of the school holidays but when September became busier, it was obvious that Consult Sol was operating more vehicles than three. He did not consider this to be a problem as Mr Shepherd had told him that the Consult Sol licence had been curtailed from eight to five and not to three. Mr Randle did not check the operator’s licence and did not check on line because he did not have the operator’s password. He had identified a maintenance contractor; set up a system of PMI inspections and for the retention of the PMI sheets (he could not say what happened to them once he had left); he started to train drivers to meet a driver shortage. He did have access to Consult Sol’s records until mid-September when Mr Shepherd removed them to his home. Mr Randle offered Mr Shepherd the opportunity of employing him on a full-time basis to run both companies on his behalf. When asked why Mr Shepherd would agree to that when he was not a director of Bennetts, Mr Randle replied “*well, we’re not stupid, are we. We both know what was going on*”. Mr Randle told the TC that Mr Shepherd was using Bennetts Travel as a front to operate Consult Sol’s vehicles. Mr Shepherd had put three of the Consult Sol’s vehicles into the Bennetts Travel livery and then used the latter’s discs: “*I couldn’t really see a problem with that*”. Mr Randle accepted that Mr Shepherd was still controlling the vehicles although Mr Randle did not realise that this was the case until “*after a period*”. Before that, he had been unaware of the “*inter-house goings on with Craig and Dave Langston ..*”. Mr Randle would not accept however, that Craig Shepherd was running Bennett’s Travel. Neither did he accept that he was aware that Trent Travel was using one of Consult Sol’s discs. He had never asked to see all of the discs. He started to “*uncover*” what was going on in September 2016 and he resigned at the end of November “*going into December*”. He asserted that Mr Langston had not told the truth at the hearing of 15 August 2017 when he minimised the role that Mr Randle had played as transport manager and the TC conceded at the hearing that on the balance of probabilities, that was so, although Mr Randle did not carry out continuous and effective control of the transport operations.

17. As for his appointment with the two companies, Mr Randle accepted that he had failed to complete both TM1 forms accurately as he had confirmed on the forms that he had written contracts with both operators when he had not.
18. In his written decision dated 7 September 2017, the TC summarised the reasons for removing Mr Randle’s good repute: he had failed, over a period of several months, to exercise continuous and effective management of the transport activities of the businesses (in practice one business). He also found that, as the transport manager on both licences, Mr Randle must have been aware of the disc-lending arrangements between Bennetts and Consult Sol under which the latter was able to operate more vehicles than the three to which it had been reduced. Because Mr Randle had not attended the public inquiry on 15 August 2017 and had stated that he had no further use of his CPC, the TC had disqualified him for an indefinite period.
19. Having considered Mr Randle’s evidence, the TC concluded that Mr Randle:

*“appeared to be confusing the roles of external consultant (Mr Randle also offers consultancy and training services) with that of a transport manager. He had given Mr Shepherd the new drivers’ manual (in my view a wholly inadequate one) and had expected Mr Shepherd to implement it and make sure drivers carried out the instructions. It does not seem to have occurred to Mr Randle that ensuring that drivers complied with regulations was in fact **his** job as a transport manager ... His resignation letter of 12 December 2016 stated that “my duty to the company is to stand as CPC holder and check the compliance and I am not involved with planning or day to day running of the company”. This is a fundamental misunderstanding of the TM role.”*

20. The TC saw no reason to change his conclusion reached following the first public inquiry about Mr Randle’s knowledge about Consult Sol borrowing the discs of Bennetts Travel in circumstances which made Consult Sol the de facto operator, thus evading the curtailment imposed in July 2016 by Traffic Commissioner Jones.
21. The TC found that there was a conflict in the evidence about the frequency with which Mr Randle attended the operating centre. On the balance of probabilities, and bearing in mind that Mr Shepherd’s truthfulness could not be relied upon, the TC was prepared to accept that Mr Randle did attend the operating centre from time to time although it was unlikely to have been weekly as Mr Randle’s letter of 31 October 2016 addressed to Mr Shepherd stated that he could not attend on some weeks because of his ill health. However, there was no evidence that Mr Randle carried out any of a transport manager’s core functions: examining driver daily defect reports, arranging and checking regular safety inspections; downloading and analysing drivers’ hours data “etc”. It was implicit from Mr Randle’s letter of 31 October 2016 that he expected Mr Shepherd to see to these things and to be shown the results. He was not in fact even being shown the results as the letter made clear. Whilst Mr Randle was not the driving force behind the licence lending deception, he was nevertheless aware of it and did nothing to prevent it. He was well aware that Mr Shepherd was the controlling mind and his resignation letters made that clear. Mr Randle had exhibited a significant degree of negligence after joining an operator with a poor compliance history whose previous transport manager had lost his reputation at a public inquiry only the month before. He did not check the number of vehicles Consult Sol was permitted to operate; he clearly did not read the public inquiry decision letter; he did not register for access to the compliance risk score and he left Mr Shepherd to implement the provisions of the drivers’ manual (such as they were) rather than doing it himself.
22. On the more positive side, Mr Randle did eventually resign on the grounds that Mr Shepherd was not taking the compliance measures necessary. Prior to that he had made an attempt to gain access to compliance information. Over the four months as transport manager, it should have quickly become apparent to him that he was not in control of maintenance and drivers’ hours processes and records and he did not have access to them. In all of the circumstances, the TC, whilst upholding his decision that Mr Randle had lost

his good repute, reduced the period of disqualification to two years, until 16 August 2019.

The Appeal

23. Mr Randle's grounds of appeal were as follows:

*“Disproportionate punishment for offence.
Incorrect information given to the TC on which he acted upon in my absence.
Company failed to present records at PI, TC punished me on records he had
not seen (sic), I could not present them as I had resigned 10 months before PI
date.
I only worked as external transport manager for 4/5 months, visiting the
companies on a 8 hour per week basis as per DOT requirements.
I had resigned before any VOSA investigation had started”.*

24. At the appeal hearing, Mr Randle appeared in person. His first point was that the TC's determinations concerning Mr Randle's good repute and disqualification were disproportionate in all of the circumstances. He relied upon the limited period of involvement he had had with the two companies; the fact that he had resigned before the DVSA investigation; he was simply trying to help Consult Sol which he viewed as a “basket case” following the curtailment of its licence. He wanted to “set them on the right path”. Unfortunately, the TC did not see it that way. Rather, he had heard “a lot of lies” about him and Mr Randle's health had been “unfairly picked on”. The TC “dismissed instantly” the two letters he had produced from Mr Wilson and Ms Borton.

25. Mr Randle then repeated his evidence about his experience working for Consult Sol and the limited periods of absence when he was unable to undertake his responsibilities. He had been naïve to accept the word of Craig Shepherd as to the position of Consult Sol at the outset and accepted that he should have checked the position of the company. He insisted that Craig Shepherd was not using the operator's licence of Bennetts Coaches even though two vehicles had been re-liveried into that of Bennetts Coaches (we note that to the TC, Mr Randle had said that three vehicles had been re-liveried). He could not see what was wrong with that and it was “none of my business”. He only worked for eight hours a week and “how they ran their business was their affair”. When asked about the requirement that a transport manager has “continuing and effective control” of a transport undertaking, Mr Randle submitted that this requirement referred to a period longer than three months. He accepted that he treated the companies as one and the same as they shared the same operating centre.

26. Mr Randle had worked in the bus and coach business for twenty five years and had held an operator's licence. In March 2016, he had lost his main occupation as a PSV driver and had then obtained an international CPC qualification and had also qualified to teach the drivers' CPC modules by having his course material approved. He was not the type to live off the state. However, in August 2017, he failed to renew his approval to teach the drivers'

CPC modules and was now without any source of income. He had learnt his lesson having simply become involved with the wrong people.

Discussion

27. We are satisfied that the TC's approach to the evidence concerning Mr Randle's role in the operation of Consult Sol and Bennetts Travel is beyond criticism, however limited in time his involvement was. His nomination as transport manager for both companies enabled Consult Sol to use Bennetts' operator's licence to facilitate the operation of vehicles beyond the company's authorisation. The TC's conclusion that Mr Randle must have known about the arrangement cannot be described as being plainly wrong, indeed it was well made out even upon Mr Randle's own evidence.
28. The TC's description of Mr Randle having fundamentally misunderstood the role of transport manager is also beyond criticism. Mr Randle failed to demonstrate even a basic practical understanding of the fundamental role of a transport manager (whether internal or external) namely, to have continuing and effective control of the transport operation. The impression that Mr Randle gave when giving evidence was that as an external transport manager, this was not a role that he was required to fulfil. His statements before this Tribunal about how the directors conducted their transport operations summed up Mr Randle's approach to his role: "*how they ran their business was their affair*" and that it was "*none of my business*". Nothing could be further from the true position and it is clear that Mr Randle on his own evidence demonstrated that he was practically wanting as a transport manager and that by reason of that, his good reputation was lost.
29. We do not agree that the TC failed to take account of the letters Mr Randle put before him from Mr Wilson and Ms Borton relating to the time spent by him at the operating centre. The TC specifically referred to them when considering the conflicting evidence upon this issue and indeed made a finding that Mr Randle's attendance was greater than as described by Mr Langston and Mr Shepherd but that Mr Randle nevertheless failed to have continuing and effective control of the operations.
30. It follows that we are not satisfied that the TC's approach to the issue of good reputation was plainly wrong or disproportionate and that whilst the period of disqualification for two years may be at the upper end of the range, it cannot be described as disproportionate or plainly wrong. All transport managers must ensure from the outset of their nomination on an operator's licence, that they have sight of the operator's licence or access to the relevant information on line to ascertain the authorisation on the licence and the conditions and undertakings recorded on it. If there has been regulatory action taken in respect of the operation in the past, they must have sight of the decision letters or decisions of the relevant TC so that they can be sure of the history of the operation and its previous shortcomings so that they can be remedied. External transport managers must discharge the same functions as those who are internal to the operation and to the same standard.

31. 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*. The appeal is dismissed.

Jagah Beech

Her Honour Judge Beech
14 May 2018