



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

**NCN: [2020] UKUT 254 (AAC)  
Appeal No. T/2019/77**

**ON APPEAL from a DECISION of the TRAFFIC COMMISSIONER for the West Midlands  
Traffic Area made on 22 November 2019**

**Before:** Mr M Hemingway: Judge of the Upper Tribunal  
Mr A Guest: Member of the Upper Tribunal  
Mr D Rawsthorn: Member of the Upper Tribunal

**Appellants:** George Young's Coaches Ltd;  
Kevin Young;  
Gwendoline Young.

**Reference:** PD1047770

**Heard:** Remotely via BT Meet Me

**Hearing Date:** 21 July 2020

**Date of Decision:** 24 August 2020

**DECISION OF THE UPPER TRIBUNAL**

The appeals of George Young's Coaches Ltd; Kevin Young; and Gwendoline Young are dismissed.

**Subject matter:**

Good repute; financial standing; professional competence; proportionality; disqualification.

## REASONS FOR DECISION

### Introduction

1. This is an appeal to the Upper Tribunal brought by George Young's Coaches Ltd (the Operator), Kevin Young and Gwendoline Young as its directors and Gwendoline Young as its transport manager, from decisions of the Traffic Commissioner (TC) for the West Midlands Traffic Area, made on 22 November 2019, following a public inquiry (PI) held on 6 November 2019. The TC, as set out in his written reasons of 22 November 2019, made these decisions with respect to those appellants:

“1. The standard international PSV licence held by George Young's Coaches Ltd is revoked with effect from 0001 hours on 23 December 2019. The revocation is pursuant to Sections 17(1)(a) and (b) and 17(3)(aa) of the Public Passenger Vehicles Act 1981 (“the 1981 Act”).

2. Pursuant to Section 28 of the Transport Act 1985, Kevin Young and Gwendoline Ruth Young are disqualified from holding or obtaining any type of operator's licence in any traffic area and from being the directors of any company holding or obtaining such a licence. The disqualification is for the period of three years, from 23 December 2019 until 23 December 2022.

3. The good repute of transport manager Gwendoline Ruth Young is lost. She is accordingly disqualified, pursuant to Schedule 3 of the 1981 Act, from acting as a transport manager under any operator's licence. The disqualification is for an indefinite period of time”.

2. We record, for completeness, that the TC went on to disqualify another transport manager (Edward Berry) who has also appealed to the Upper Tribunal but whose appeal has been dealt with separately. The appeals of the Operator, Kevin Young and Gwendoline Young had been listed for a traditional face-to-face hearing which was to have taken place before the Upper Tribunal on 8 April 2020. However, the hearing did not proceed on that day in consequence of the imposition of a stay on all cases then before the Administrative Appeals Chamber of the Upper Tribunal and which resulted from the inevitable and significant disruption caused by the coronavirus pandemic. Matters did proceed to a hearing on 21 July 2020 and, with the agreement of all participants, that was a telephone hearing. We record here that we are satisfied that the telephone hearing afforded an opportunity for the appellants to fully participate in the appeals process and to make any points relevant to the outcome of the appeal which they wished.

### The relevant factual background

3. The Operator was previously in possession of a standard international PSV operator's licence which, at the material times for the purposes of this appeal, authorised the use of nineteen vehicles. Essentially, the business was latterly involved in the transportation of children to and from schools for gain. The Operator has two directors being Gwendoline Young and her son Kevin Young. At the relevant times Gwendoline Young was the Operator's transport manager but, between April 2019 and September 2019, there was a further transport manager on the licence being the above mentioned Edward Berry. It is recorded, in the documentation which has been prepared for this appeal that the Operator obtained its licence in 2005. Gwendoline Young informed us, at the hearing of her appeal, that she had, in fact, been involved in the type of business pursued by the Operator for a period of some sixty years.

4. The Operator had previously been called to a PI which took place on 18 September 2018 following an unsatisfactory maintenance investigation by the Driver and Vehicle Standards Agency (DVSA). Although this appeal to the Upper Tribunal is concerned with the various decisions which the TC made following the later PI of 6 November 2019, it is necessary, because of the way the case has been argued by the appellants, to say something about the previous PI.

5. The PI of 18 September 2018 was conducted by the same TC who made the decisions now under appeal before us. Gwendoline Young had not attended the previous PI as a result of health issues but her record as transport manager had attracted concern. The TC, in his written reasons of 22 November 2019, repeated certain relevant findings he had made following the PI of 18 September 2018. He recorded those findings as follows:

“i. The operator’s vehicles had not always been given inspections at the promised eight-week intervals. Most of the gaps were accounted for by the vehicles being off road, but the vehicles had not always been given inspections before being put back into service;

ii. Many safety inspection sheets lacked details such as tyre tread depths;

iii. The driver defect reporting system was well below the required standard. Drivers had clearly been failing to carry out effective checks, as could be seen from the numerous prohibitions for driver detectable items. The system for reporting and rectifying defects had been poorly managed and the chain of reporting and action was frequently unclear;

iv. There had been five prohibitions for roadworthiness shortcomings in the past two years;

v. The MOT pass rate was very poor;

vi. The operator had failed to respond to DVSA’s notice of shortcomings;

vii. There was clear evidence that the transport manager had failed to keep abreast with modern day best practice and had let standards slip, most notably in driver defect reporting and condition of vehicles”.

6. Pausing there, the Operator’s sole transport manager at that time was Gwendoline Young. In the written decision of 22 November 2019, the TC harked back to the PI of 18 September 2018 and said this with reference to her:

“3. Director and transport manager Gwendoline Young did not attend the inquiry in September 2018 owing to ill health. Towards the end of that enquiry I made the following remarks:

“I just want to raise one other point about the transport manager [Gwendoline Young]. I understand why she could not be here today. It has meant that I have been unable to make a complete assessment of what I think of her good repute and professional competence. But I have to say that on the evidence so far I am not full of confidence that this is an operation which I would be happy to let go forward in anything other than the most short term with that transport manager at the helm. I do not see sufficient evidence that she has taken on board the lessons from [the DVSA vehicle examiner] Mr Bird’s report. There are still things here which are on the “to-do” list rather than the “done” list and there are still things which although started are far from the finished article. Maybe it is one of those cases which, given the age of the transport manager,

rather than proceed to a separate hearing of the transport manager an undertaking can be given that you will find an alternative transport manager within a certain period of time. Is that something which you would be prepared to agree to?"

4. There followed a discussion in which Kevin Young replied that it would depend on the "certain period of time". I stated that I did not want this period to be months, but clearly more than a few days would be needed in order for the operator to find an alternative transport manager. After a short adjournment in which Mr Banks, the solicitor representing the company took instructions, the inquiry resumed, and Mr Banks stated that "that undertaking will be given, in relation to the transport manager". I then concluded that I would record the undertaking on the licence and that a new transport manager should be nominated by 5 November 2018 [giving the operator almost seven weeks in which to do this]. I concluded the inquiry by stating that "with the undertaking that a new transport manager be nominated by 5 November [2018], I would be prepared to accept the resignation of the current transport manager by that date".

5. The TC went on to suspend the Operator's licence for seven days from 29 Oct 2018 and to accept undertakings to the effect that the vehicles used by the Operator would be given roller brake tests every 12 weeks in addition to brake tests at MOT, and that a new transport manager would be nominated by 5 November 2018.

6. On 12 October 2018 the Office of the Traffic Commissioner (OTC) received a duly completed form TM1 (a standard form used in connection with the appointment of transport managers) nominating Edward Berry as transport manager. The content of the form indicated that Mr Berry would be an internal transport manager and would work forty hours per week in that capacity. Some further enquiries of him were made but, prior to his appointment being accepted, the TC requested sight of a copy of the written employment contract made between the Operator and Mr Berry. The Operator was told of the need for that on 19 December 2018. But, according to the record, nothing was then heard from the Operator until 22 March 2019 when Kevin Young sent an email to the OTC stating "Mr Edward Berry has agreed to be transport manager". On 26 March 2019 the Operator was reminded of the need for the TC to have sight of the employment contract and a further reminder was sent on 10 April 2019. This elicited the sending of a document headed "contract agreement". The TC, in the written decision of 22 November 2019, explained that the document said no more than this. "This is an agreement that Mr Edward Berry will undertake the position of Transport Manager for George Young's Coaches Ltd". It is not controversial to say that the information contained in that document fell significantly short of what one might reasonably expect in terms of the sort of detail a proper contract might contain. But, after that document was received by the OTC, matters went awry from an administrative perspective. According to the TC, what should have happened was that the document should have been placed in front of him to ascertain whether or not he was satisfied with it. The TC himself has indicated that, had that been done, he would have indicated that he was not so satisfied. Given the paucity of detail contained within the document that is unsurprising. But, in fact, the document was not placed before him at all and, as he explains "The licence was simply amended to record Mr Berry as an additional transport manager on the licence alongside Gwendoline Young". In his written reasons of 22 November 2019 the TC observed:

"This was not at all what I had determined at the September 2018 public inquiry when it had been clearly accepted by the operator that a new transport manager should be nominated by 5 November".

7. On 19 September 2019 Nathan Harwood, a DVSA Inspector, visited the Operator's premises. We shall say a little more about that below. The OTC then received a letter which had been sent to it by one Julian Oakley, who had been the Operator's maintenance provider. The letter contained an assertion that the Operator had not been paying the provider "owing to lack of funds". Information such as that might have had implications for the Operator's compliance or otherwise with requirements relating to "financial standing" but, due to what appears to have been another administrative mishap, the letter was not placed timeously before the TC.

8. The Operator had what the TC described as "a school contract" with Gloucestershire County Council (the LA). In October 2019 it was brought to the TC's attention that a report had been prepared by an engineer employed by the LA following an inspection of one of the vehicles used by the Operator under that contract. The TC recorded, in his written reasons of 22 November 2019, that "the vehicle had been inspected at the school in question on 9 May 2019 and found to have various safety defects including exhaust fumes entering the vehicle, rust holes in the wheel arches, water leaking into the vehicle, bumper and bonnet insecure, an insecure mirror and a gas strut on the luggage compartment door broken, with the result that this door would not close properly". The LA had evidently asked the Operator to respond to concerns it had raised about that and whilst a response was provided, the TC was to go on to describe it as having been dismissive in tone. He commented "It was not the response of an operator which took seriously the need to keep its vehicles roadworthy". It also became evident that the LA had attempted to but had not been able to discuss its concerns with Edward Berry. It is also recorded in the material before us that, in fact, the Operator had informed the LA, seemingly in response to those attempts, that the TC "had accepted Gwendoline Young could remain on the licence as transport manager" an indication which the TC later described as having been "untrue". Some further concerns were subsequently relayed to the TC by the LA. The next event of significance was the receipt, by the OTC, of a written communication from Edward Berry, of 25 September 2019, in which he communicated his decision to resign as transport manager. In that letter he indicated that he had only been transport manager for "about three to four months" notwithstanding the undertaking referred to above that a new transport manager would be appointed by 5 November 2018. He said he had resigned because the "working relationship with Mrs Young is not working as she will not let me have any access to paperwork".

9. It was against the above background and in light of the above concerns that the TC decided to call the Operator, Kevin Young, Gwendoline Young and Edward Berry to a PI.

#### Some relevant legislative provisions

10. Prior to summarising what happened at the PI of 6 November 2019, we think it would be useful to summarise the key elements of the legislation which the TC was called upon to apply.

11. Section 17 of the Public Passenger Vehicles Act 1981 relevantly provides:

#### **17. – Revocation, suspension etc. of licences.**

(1) A traffic commissioner must revoke a standard licence if it appears to the commissioner at any time that-

(a) the holder no longer satisfies the requirements of section 14ZA(2) or

(b) the transport manager designated in accordance with Article 4 of the 2009 Regulation no longer satisfies the requirements of section 14ZA(3)....

(2) Without prejudice to sub-section (1) above, a traffic commissioner may, on any of the grounds specified in sub-section (3) below, at any time –

(a) revoke a PSV operator's licence; ...

(3) The grounds for action under sub-section (2) above are –

(a) ...

(aa) that any undertaking recorded in the licence has not been fulfilled;...

12. Section 14(ZA) relevantly provides;

**14(ZA). – Requirements for standard licences**

(1) the requirements of this section are set out in sub-sections (2) and (3).

(2) the first requirement is that the traffic commissioner is satisfied that the applicant –

(a) has an effective and stable establishment in Great Britain (as determined in accordance with Article 5 of the 2009 Regulation),

(b) is of good repute as determined in accordance with paragraph 1 of Schedule 3,

(c) has appropriate financial standing (as determined in accordance with Article 7 of the 2009 Regulation), and

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

(3) the second requirement is that the traffic commissioner is satisfied that the applicant has designated a transport manager in accordance with Article 4 of the 2009 Regulation who –

(a) is of good repute as determined in accordance with paragraph 1 of Schedule 3,

(b) is professionally competent as determined in accordance with paragraph 6 of Schedule 3, ...

13. Schedule 3 relevantly provides:

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

(a) ...

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

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

- (a) ...
- (b) such other information as the commissioner may have as to previous conduct of –
  - i. the company’s officers, employees and agents in relation to the operation of vehicles of any description in the course of any business carried on by the company; and
  - ii. each of the company’s directors, in whatever capacity, in relation to the operation of vehicles of any description in the course of any other business...

14. Section 28 of the Transport Act 1985 empowers a TC, when revoking a PSV Operator’s licence, to disqualify a former holder from holding or obtaining such a licence. The TC had various of the above provisions in mind when considering the appeal and reaching the decisions he did.

The public inquiry of 6 November 2019

15. The key attendees were Kevin Young, Gwendoline Young, Edward Berry, Julian Oakley, Nathan Harwood and Nick Helliker (senior contracts officer with the LA’s integrated transport unit). The Operator, Kevin Young and Gwendoline Ruth Young were represented by one Mr B Culshaw, whom we understand to be an experienced representative in this field. The transcript of the PI is extensive, running to some sixty-six pages in total. We do not propose to set out or even summarise everything recorded in the transcript. But we will say something of what took place because of its relevance to certain key findings of the TC and certain of the arguments pursued before us.

16. Oral evidence was given by various persons including Nathan Harwood, Nick Helliker, Edward Berry and Julian Oakley. The first three of those were cross-examined by Mr Culshaw. As to Julian Oakley, he gave evidence in response to questions put by the TC but Mr Culshaw indicated he had not had the opportunity to prepare cross-examination or indeed to properly consider Mr Oakley’s evidence because he had not known that the latter was going to attend the PI and give any evidence at all until the morning of the PI. Further, he had only just received documentation relevant to the evidence Mr Oakley was giving. He had not, he explained, had an opportunity to take instructions upon that documentation. There was an exchange between the TC and Mr Culshaw about the matter which effectively ended when the TC observed “the outcome of the Inquiry is not going to turn on this point”. That was, we think, correctly taken by all parties as an indication that the TC would not subsequently rely upon Julian Oakley’s evidence for his findings and conclusions.

17. The TC himself, in his written reasons of 22 November 2019, summarised the key evidence which had been given at the PI. This is what he said:

**“Public inquiry**

14. In the light of the above, I decided to recall the operator and both transport managers to a public inquiry. The call-up letters were sent on 8 October 2019.

*DVSA Maintenance Investigation*

15. Shortly after the call-up letters had been sent, I received a maintenance investigation report from DVSA vehicle examiner Nathan Harwood, which my office immediately forwarded to the operator. Mr Harwood reported that he had visited the operator on 19 September 2019. He had been informed that transport manager Edward

Berry was on holiday but that otherwise he attended the operator's premises "most days" to check paperwork and maintenance. Mr Harwood asked for evidence of Mr Berry's involvement with the business but was told that everything was communicated verbally. Director Kevin Young stated that he (Mr Young) looked after control of vehicle movements and maintenance. Gwendoline Young was also present at the meeting: Mr Harwood ascertained that she was unaware of DVSA's "Guide to Maintaining Roadworthiness".

16. Kevin Young provided Mr Harwood with a contact telephone number for Mr Berry: the number turned out to be out of use. Mr Harwood was subsequently able to find Mr Berry by using the records held by CLO Leeds. He visited Mr Berry who told him that:

- i) he had not been informed by the operator that he had been appointed as transport manager until June 2019;
- ii) his attempted input into the operation had met with resistance;
- iii) his requests to be shown paperwork had been refused;
- iv) he had not received any payment for his role as transport manager.

17. Mr. Harwood's perusal of the company's maintenance records recorded that:

- i) roller brake tests were not being carried out every 12 weeks, contrary to the undertaking that had been given at the September 2018 public inquiry. Some roller brake tests had been carried out, but there were gaps of 4-7 months between them. Many of the results were meaningless because incorrect brake codes had been entered on the equipment by the tester. Decelerometer tests had also been carried out but these would have been ineffective owing to low speeds;
- ii) the 8-weekly safety inspection reports showed a significant amount of defects which drivers would have been expected to report on their daily walk-round checks;
- iii) the safety inspection reports still contained no information on tyre tread depths, pressures and brake wear;
- iv) many defect reports were impossible to read or did not identify the driver accurately;
- v) the 8-week inspection interval was not always being respected. For example, there was a 21 week interval between the safety inspections given to vehicle A5 GYC. The maintenance file recorded the vehicle as VOR for the intervening period, but driver defect reports showed that the vehicle had been driven on at least 36 days during the period it was supposedly off road;
- vi) during his inspection he had issued a prohibition to vehicle GHZ 8754 for oil contamination from the air dryer vent. This had been noted on the August 2019 safety inspection form, where the action was recorded as "monitor".



18. Mr Harwood concluded his report saying that he had done his utmost to highlight the gravity of the situation to the operator. “During the entire process, however, I have been subjected to repeated comments and accusations being made about other operators, people or bodies for not being compliant in their field or having ulterior motives against this operator”. This reflected my own experience: in the run-up to the public inquiry my office received several communications from the operator complaining that I had not taken sufficient action over its complaints about other operators.

*Public Inquiry*

19. The public inquiry took place in Birmingham on 6 November 2019. Present were directors Kevin and Gwendoline Young, former transport manager Edward Berry, Julian Oakley the previous maintenance provider, DVSA vehicle examiner Nathan Harwood and Nick Helliker from Gloucestershire County Council. The operator was represented by Barry Culshaw solicitor-advocate.

*Evidence of Kevin Young*

20. Mr Young stated that Edward Berry had come down to the yard a few times. However, he accepted that Mr Berry had not carried out any work as transport manager and had not been paid.

*Evidence of Edward Berry*

21. Mr Berry said that he had found out from the internet in June 2019 that he had been appointed as transport manager for the company. He had asked to see some paperwork but Gwendoline Young had refused to show him any. He had subsequently phoned the operator a few times in June and July: the calls had not been returned. In August he had been on holiday and in September he had been phoned by VE Harwood with a view to meeting. He had resigned the following day. He had done no work as a transport manager and had not been paid anything.

*Evidence of Gwendoline Young*

22. Mrs Young still had no idea of the importance of the “Guide to Maintaining Roadworthiness” or even of what it was. Her response to the extended intervals between safety inspections was to tell the maintenance provider to “get it done”. I asked her to describe what she did to fulfil her transport manager role: she replied that she attended the yard every day and spoke to drivers. This appeared to be it: Mrs Young clearly had no conception of the duties and responsibilities of a modern-day transport manager (she holds her qualification by virtue of acquired rights). Asked what action she had taken to improve compliance following the 2018 inquiry, she stated that six new (to the operator) buses had recently been acquired. She had never undergone any form of training as a transport manager but would be willing to attend a course. She had not been aware that I had expected her to resign after the inquiry of September 2018: she saw no reason why she should have to.

*Evidence of Julian Oakley*

23. Mr Oakley, the maintenance provider until June 2019, stated that it had sometimes been hard work to get the vehicles in from the operator for maintenance. The relationship between him and the Youngs had been going downhill for the past two years. The vehicles were in a very tired condition, partly because of the tough work they had to carry out on the rural roads and lanes of Gloucestershire. The safety inspection interval should have been more frequent than 8 weeks. Mr Oakley had been unaware of the undertaking to have vehicles roller brake tested every 12 weeks. He had written to the operator asking whether a Bowmonk decelerometer test was satisfactory and had received no reply.

*Evidence of Nathan Harwood*

24. VE Harwood confirmed that the decelerometer braked tests did not conform to acceptable standards. It was clear to him that Gwendoline Young had frozen out Mr Berry as transport manager. Her knowledge was not that expected of a transport manager – she had never heard of the “Guide to Maintaining Roadworthiness” for instance.

25. VE Harwood mentioned the vehicle which had clearly been operated during the period when the vehicle file recorded is as being off road and there was a gap of 21 weeks between safety inspections. I looked at another vehicle file and saw from the driver defect reports and mileages that this vehicle too had been operated when it had been recorded as off the road. The VOR records appeared to be largely fictional. When I looked at the wall-chart I began to understand why – it was a mass of crossings out and confused entries. It was very difficult to tell at a glance which vehicles were VOR and which were not.

*Finances*

26. In closed session I examined the operator’s financial standing. Bank statements in the company’s name showed average available finances over three months of £56,200, considerably short of the £88,000 required to support a licence of 19 vehicles. The operator stated that the value of its vehicles would bridge the gap and produced a copy of an (unsigned) document from Drew Wilson Coach Sales Ltd valuing four vehicles in its fleet at a total of £63,000. The valuation estimated the timescale of a sale as between 6-8 weeks. Mr Young said that these vehicles were coaches previously used on private hire business: this side of the operator’s business had been wound down, to concentrate on the core school contract business”.

18. It was argued by Mr Culshaw that whilst the situation regarding transport managers was “unsatisfactory”, the outcome of the PI of 19 September 2018 had been “ambiguous” with respect to Gwendoline Young and her possible continuation as transport manager. It was recognised that Edward Berry had not exercised continuous and effective management as a transport manager but, at least in the view of Gwendoline Ruth Young, she had been doing so albeit in a way which might not have been fully compliant. She would, though, be prepared to undertake training and Kevin Young was preparing to undertake some training himself. As to maintenance, the undertaking relating to roller brake tests had not been fulfilled straightaway but such testing had been carried out since June 2019 when another maintenance provider had been appointed. This was not, it was contended, a case which would fall within the “severe” category such as to justify putting the operator out of business.

The Traffic Commissioner’s findings and conclusions

19. With respect to the arguments concerning alleged ambiguity and the Operator’s alleged attempts to hide Mr Berry’s lack of involvement as a transport manager from both the DVSA and the TC himself, the TC said this:

**“Consideration**

31. No one present at the inquiry into the operator in September 2018 could possibly have come away with any idea other than that I considered that transport manager Gwendoline Young was not up to the task of managing the licence and that she should be quickly replaced. The only reason I did not remove her reputation was that I wished to give her the opportunity to retire gracefully.

32. I accept that I should have been more pro-active in subsequently ensuring that she did retire and that the newly nominated transport manager took her place. But even if I accept Mr Culshaw's proposition that there was some ambiguity over whether Mr Berry should be a replacement or an additional transport manager (which I do not), it is quite clear that the operator simply appointed Mr Berry in name only and never intended him actually to carry out a transport manager's duties. They did not notify him that he had been appointed when I accepted him onto the licence in April 2019 – he only found out subsequently through the internet. The contract of employment was risible, they did not pay him and I am satisfied that his requests to see paperwork were refused. So even on the operator's interpretation of what they had agreed to in September 2018 – the appointment of an additional transport manager – there was a complete failure to carry this out.

33. Worse, Kevin Young sought to conceal this from both DVSA and myself. The TM1 application form submitted by him in October 2018 stated that Mr Berry would be working 40 hours per week as a transport manager. In the event, no work was done. When VE Harwood visited in September 2019, Kevin Young told him that Mr Berry was on holiday that day but visited the yard most days: this was completely untrue.

34. In reality, the operation continued to be overseen, not by a competent transport manager as I had intended, but by the (unqualified) Kevin Young and Gwendoline Young whose performance as transport manager I had concluded in September 2018 was considerably below the expected standards. Unsurprisingly, the shortcomings discovered by VE Harwood in September 2019 were remarkably similar to those which had brought the operator to public inquiry in September 2018: excessive intervals between safety inspections, lack of information on the safety inspection sheets, an ineffective driver defect reporting system, inadequate brake tests, poor vehicle condition”.

20. The TC went on to explain his findings and conclusions in this way:

**“Findings**

35. I find that the transport manager Gwendoline Young lacks good repute (Schedule 3 of the 1981 Act refers). At the inquiry in September 2018 I clearly found that she had been an inadequate transport manager: on that occasion I refrained from removing her repute on the understanding that she would shortly step down. In the event she did no such thing. Not only that, but she completely failed to ensure that the undertaking relating to roller brake testing given at the 2018 inquiry was fulfilled or attend to the other shortcomings revealed at that inquiry. She continued to show all the inadequacies as a transport manager which had brought the operator to the 2018 inquiry. It became absolutely clear from her evidence at this (2019) inquiry that she has no idea of the responsibilities and duties on an up-to-date transport manager and, from her insouciant attitude, did not seem to appreciate that this was in any way important. On the more positive side of the balance she has said that she is prepared to attend a CPC refresher course, but this is far too little far too late. She should have attended such a course years ago.

And then:

37. As a result of the findings above, and given that the operator now does not have a valid transport manager, I find that the operator lacks professional competence (Section 17(1)(a) of the 1981 Act refers.

38. I find that the company George Young's Coaches Ltd lacks good repute (see also Section 17(1)(a)). Its director Kevin Young failed to fulfil the undertaking he gave

in September 2018 to appoint a new transport manager. Whether he thought the requirement was for a new or additional transport manager is immaterial: he simply went through the motions of appointing someone and never took any steps to ensure that that person actually carried out the transport manager role in practice. He knew that this was not what I required: that is why he attempted to hide Mr Berry's absence from both VE Harwood and myself. The other director Gwendoline Young connived in this attempt to evade the undertakings given at the September 2018 inquiry. The company's good repute cannot survive this behaviour by its two directors.

39. I find that the company has failed to fulfil its undertaking, given at the 2018 inquiry, that vehicles would be given roller brake tests every 12 weeks (Section 17(3)(aa) refers). As is clear from VE Harwood's report, there have been much longer gaps between roller brake tests. The operator's then maintainer was not even informed of the roller brake test requirement.

40. I find that the operator has failed to fulfil its undertaking to keep vehicles fit and serviceable. The inspection by the Gloucestershire County Council engineer found a vehicle in a poor condition to the extent that it terminated the contract for the use of that vehicle. When VE Harwood visited in September 2019 he inspected three vehicles and issued two vehicles with delayed prohibitions for seating defects, oil leaks and seat belt issues. The long lists of defects on most of the safety inspection sheets betoken a fleet in generally poor condition.

41. I find that the operator lacks financial standing (Section 17(1)(a) refers). The operator is some £30,000 short of the amount it needs to demonstrate appropriate financial standing. The company is dependent on selling vehicle assets to raise sufficient funds to support the licence. The valuation of vehicles is unlikely (according to the valuer) to be realised within a four week period. If the operator is relying on these assets it should have sold some of them a while ago in order to realise the funds.

*Balancing act*

42. In the course of reaching these findings I conducted a balancing act. On the negative side were the issues set out in the findings. I could find little concrete to put on the positive side: there was Kevin Young's intention to take the transport manager CPC exam in December 2019, as well as Gwendoline Young's preparedness to attend a refresher course. But against the operator's act of deception in the matter of appointing a new transport manager, and the consequent failure to effectively address the shortcomings in maintenance and the vehicles' condition, these positive aspects did not weigh heavily with me. I also note that Kevin Young previously expressed an intention at the September 2018 inquiry of qualifying as a transport manager, but all that happened subsequently (in October 2018) was that he emailed my office to ask if he could be accepted as a transport manager under acquired rights (which has not been possible for the last eight years).

*Priority Freight and Bryan Haulage questions*

43. Having found that the operator lacks good repute, professional standing and financial standing, revocation of the licence is mandatory under Section 17(1)(a) and (b) of the 1981 Act. However, before reaching these findings I also asked myself the "Priority Freight" question of how likely it is that the operator will comply in the future. Given that the 2019 inquiry has found almost exactly the same non-compliance issues that the 2018 inquiry found, and given that the operator has failed to fulfil its undertakings given at the 2018 inquiry, I conclude that the answer is "highly unlikely". A negative answer to the "Priority Freight" question would tend to suggest a positive answer to the "Bryan Haulage" question of whether the operator deserves to go out of business. Because of its dishonesty over the appointment of Mr Berry as transport

manager and its failure to make any real improvements in compliance since 2018 I am persuaded that it does.

### **Decisions**

#### *Revocation of licence*

44. For the reasons set out above, the licence is revoked pursuant to Sections 17(1)(a) and (b) and 17(3)(aa) of the 1981 Act. I am allowing the usual 28 day period before the revocation takes effect.

#### *Disqualification of directors*

45. I have considered whether to make a disqualification order preventing Kevin Young and Gwendoline Young from holding an operator's licence in the future. Because of their personal responsibility for the failure to heed the requirements of the September 2018 inquiry I conclude that they should be so disqualified. In deciding upon the length of the disqualifications, I have taken account of paragraph 100 of the Senior Traffic Commissioner's Statutory Guidance Document 10. This posits a starting point of between one and three years for a first public inquiry and a period of between five and ten years where an operator has allowed drivers to falsify records or deliberately endangers people's safety. This is the operator's second inquiry within a relatively short space of time. Although I conclude that passengers in the operator's vehicles have on occasions been exposed to a degree of danger which would not have been the case in a well-run operation, I do not consider that this was a deliberate or reckless act by the operator. I have therefore decided upon a period of disqualification at the upper end of the range for first public inquiry – three years.

46. Having concluded that transport managers Gwendoline Young and Edward Berry have both lost their repute, I must also disqualify them from acting as such in the future, under Schedule 3 of the 1981 Act. Both hold the transport manager qualification by virtue of acquired rights so have never taken the CPC examination or (in Mrs Young's case) ever undertaken any formal training. In my judgement, neither possesses the competence or knowledge which is expected of a modern-day competent and reputable transport manager. A time-limited disqualification would be unhelpful, since the mere passage of time is unlikely to rectify these shortcomings. I am thus disqualifying them for an unlimited period of time and consider it would be best if they now retired and did not seek to act as a transport manager again. I would only be prepared to consider an application for the re-establishment of repute if the applicant had taken and passed the transport manager CPC examination".

### The grounds of appeal to the Upper Tribunal

21. The written grounds submitted by the Operator, Kevin Young and Gwendoline Young (none of them still being represented) contained the following propositions:

- (a) The TC's decision to revoke the operator's licence had been wrong because it had the consequence of putting nineteen people out of work.
- (b) The TC's decision to revoke the licence had been wrong because a consequence of it was to end a well-established business which "has been operating since 1960".
- (c) The decision to disqualify Kevin Young and Gwendoline Ruth Young from holding a licence for a period of three years was "very harsh".
- (d) There had been material unfairness at the PI because the TC had admitted oral and written evidence from Julian Oakley in circumstances where it had not been known,

until very shortly prior to the commencement of the PI, that he was going to provide evidence at all.

- (e) There had been material unfairness in consequence of the TC having admitted evidence from Nick Helliker and the LA generally. That is because there had been no legal relationship between the Operator and the LA such as to permit the latter to examine any of the Operator's vehicles.
- (f) There had been unfairness at the original public inquiry of 19 September 2018 in that Gwendoline Young had not, at that stage, been given the opportunity to take a refresher course with respect to her duties as a transport manager and had not been given an opportunity to attend a "formal meeting" with the TC.
- (g) A different operator (a rival to Young's coaches Ltd) had received more favourable treatment than had the Operator appellant. There was, with respect to this, a "hidden agenda".

22. Having provided written grounds of appeal the appellants went on to provide further documentation in the period leading up to the appeal hearing and which included, amongst other things, some letters from employees and customers of the Operator expressing satisfaction. The day prior to the hearing we were provided with a ten-page written argument prepared by Kevin and Gwendoline Young which was accompanied by a number of attachments. The further written arguments revolved largely around the "hidden agenda" allegations and the involvement of Julian Oakley.

23. At the hearing of the appeal it was asserted, amongst other things, that the Operator did not lack finance, that Julian Oakley's evidence had appeared to influence the TC, that it had appeared that the TC's decision had been made in advance of the PI, that Gwendoline Young had "done everything right" in pursuing her functions as a transport manager, and that the decision to disqualify both had been unduly harsh in all the circumstances.

### **The approach of the Upper Tribunal to appeals such as this**

24. Paragraph 17(1) of Schedule 4 to the Transport Act 1985 provides:

"The Upper Tribunal are to have full jurisdiction to hear and determine all matters (whether of law or fact) for the purpose of the exercise of any of their functions under an enactment related to transport".

25. The nature of the Upper Tribunal's jurisdiction was examined in *Bradley Fold Travel Ltd and Anor v Secretary of State for Transport* [2010] EWCA Civ 695. The Court applied *Subesh and ors v Secretary of State for the Home Department* [2004] EWCA Civ 56, where Woolf LJ held:

"44. ...The first instance decision is taken to be correct until the contrary is shown... An appellant, if he is to succeed, must persuade the appeal court or tribunal, not merely a different view of the facts from that taken below is reasonable and possible, but there are objective grounds upon which the court ought to conclude that a different view is the right one....the true distinction is between the case where the appeal court might prefer a different view (perhaps on marginal grounds) and one where it concludes that the process of reasoning and the application of the relevant law, required it to adopt a different view. The burden which an appellant assumes is to show that the case falls within this latter category".

26. We have been guided by the above in considering and determining this appeal.

Our reasoning on the appeal

27. We have started by reminding ourselves that there are, in fact, a number of decisions before us all of which have been challenged in these proceedings. So, we are tasked with considering the decision to revoke the Operator's licence, the decision to disqualify Kevin Young from holding a licence for a three-year period, the decision to disqualify Gwendoline Young from holding a licence for a three-year period and the decision to disqualify Gwendoline Young from acting as a transport manager. It is fair to say, though, that at least some of the grounds of appeal and arguments relied upon by the appellants relate across the board to all of those various decisions.

28. We shall, first of all, consider the grounds of appeal and arguments presented which might properly fall within the rubric "fairness grounds". As to those, we shall firstly consider the argument relating to what was said to be unfair reliance upon evidence offered by Julian Oakley.

29. There has, it is apparent from the material before us, been some disagreement between the individual appellants and Julian Oakley regarding vehicle maintenance issues and perhaps other issues. There has been litigation between them though it appears those proceedings were settled and that, on the face of it, there is now no ongoing rancour. But the specific points relied upon by the appellants related to the fairness or otherwise of the TC permitting Julian Oakley to give evidence at the PI, and then relying on that evidence, without there having been an opportunity for the appellants and their then representative to properly challenge it.

30. As already noted, concern was expressed as to the late introduction of Mr Oakley's evidence by the appellants then representative at the PI. The TC might, we think, have dealt with the matter better by simply granting a short adjournment to enable the representative to take instructions on the documentary evidence provided by Julian Oakley prior to his giving his oral evidence. But the course taken by the TC was, in effect, to indicate that he would not take into account Julian Oakley's evidence when deciding matters relating to maintenance. That was a fair way to proceed and one which the appellant's then representative appeared happy with. Whilst Kevin Young contended, before us, that such evidence had been taken into account by the TC we cannot see that it was. We have set out, above, the key passages of the TC's reasoning with respect to his concerns about maintenance as well as his concerns about various other issues. But as to maintenance, whilst he made clear adverse findings, it is apparent that in so doing, he was relying upon the detailed evidence of Nathan Harwood (see paragraphs 24, 25 and 39 of the TC's written reasons). Nathan Harwood had not only given oral evidence before the TC but had prepared a particularly comprehensive written report. There is no doubt that the TC was perfectly entitled to take that into account as he did. We detect no unfairness.

31. It was contended by the appellants that the TC had acted unfairly in taking into account the evidence of Nick Helliker and, as we understand it, all evidence emanating from the LA. The TC heard from Nick Helliker and had before him documentary evidence provided by the LA. We note that no issues were raised at the PI by the then representative for the appellants, concerning the admissibility of any of that evidence. Further, that representative had the opportunity to cross-examine Mr Helliker at the PI, an opportunity which he availed himself of. The contention regarding fairness, which had not been made at the PI but which was made to us, seemed to be based upon an argument that there had been no legal relationship between the Operator and the LA such as to entitle any of their staff to inspect and reach conclusions upon matters relating to the roadworthiness or safety of the Operator's vehicles. But really the point is this. The evidence was directly relevant to the Operator's compliance or otherwise with maintenance and safety

requirements. The TC was very clearly permitted to take such relevant evidence into account. We detect no unfairness in his doing so.

32. A number of points were advanced in the course of the appeal to the Upper Tribunal concerning what was referred to as a “hidden agenda” and which really amounts to allegations of collusion concerning the DVSA which, it was suggested, resulted in more favourable treatment being received by a rival of the Operator appellant. We can deal with these points relatively quickly. The focus of the TC was upon the record of compliance or otherwise with regulatory requirements by the Operator, its directors and its transport managers. It was entirely appropriate for the TC to have that focus. Whatever treatment a different Operator had or had not received did not touch upon that.

33. A further argument based upon fairness was made at the oral hearing of the appeal to us, when it was contended that the TC had made his decision in advance of the PI. We have to say that we can find nothing to support the proposition that the TC had, in fact, pre-judged matters to any extent at all. The issues of concern had appropriately been identified in the various call-up letters which had been sent to the appellants. The TC then heard evidence from those in a position to give it. It is apparent that he then considered that evidence (subject to his excluding Julian Oakley’s evidence with respect to maintenance issues) and then reached a decision based upon that evidence. He then explained it in his written reasons. That is what he was called upon to do and that is what he did. We detect no pre-judging, no bias and, therefore, no unfairness.

34. Finally, with respect to fairness, a discrete point was made concerning the situation of Gwendoline Young as the transport manager. It is argued that at the PI, which took place prior to the one which led to the decisions now under appeal, there had been unfairness through the TC not providing her with an opportunity to attend a refresher course or not affording her the chance to have some form of “meeting” with her. Perhaps that latter contention best translates as an argument that the TC, at that PI, ought to have adjourned to enable her to attend a re-convened PI or at least ought to have made some form of provision for her participation in the process perhaps by the making of directions facilitating written submissions with respect to particular points of concern. But however that argument is defined or understood we are not able to detect merit in it. The first point to make is that the appeal is directed against the TC’s decisions of 22 Nov 2019, which were based upon the evidence given to and the submissions made at the PI of 6 November 2019. Any challenge to decisions made as a result of the PI of 18 September 2018 should have been made in response to the issuing of those decisions and within the appropriate time limit for challenging them. To our mind, that is sufficient to dispose of those arguments. But additionally and in any event, we would point out that had Gwendoline Young wished to take any form of refresher training or other training relevant to her knowledge or competence as a transport manager, she could have done so at any time. She did not require a TC to direct her to do it. Whilst it was unfortunate that she was not able to attend the PI which took place in September 2018, there is nothing to suggest that she was, in fact, precluded from making whatever written representations she might have wished to make. Once again then, we detect no unfairness.

35. There are then a number of grounds and arguments which might be thought to fall under the general heading of “proportionality”. This includes the point regarding redundancies; the alleged inappropriateness of the making of a decision ending a long-term business enterprise; the harshness of disqualifying the directors and (as we understand the arguments) the harshness of disqualifying Gwendoline Young as transport manager.

36. Prior to our making our decision as to those arguments it is, we think, appropriate to say something about some of the failings which the TC identified. He had, in our view, made it entirely clear that he was significantly dissatisfied with the conduct and competence of Gwendoline Young



as transport manager. As is apparent from the parts of his written reasons, which we have set out above, he had previously made it clear that he was not content, save for a very limited period, for the Operator to continue in business with her as its transport manager. We do not see how any different understanding could rationally have been arrived at. The TC had before him evidence provided by Nathan Harwood to the effect that the Operator effectively went through the motions in appointing a different transport manager (Edward Berry) and concluded that it had “never intended him to actually carry out a transport manager’s duties”. He found that Kevin Young had sought to conceal the fact that the arrangement with Edward Berry was effectively, from the Operator and its directors’ point of view, a sham. He found that Gwendoline Young had been complicit. We cannot see any basis to conclude that that important finding of deliberate deception was plainly wrong. We appreciate that there had been administrative failings as outlined in the TC’s written reasons but cannot think, despite the directors seeming to hint at this, that they were confused by that. So, in approaching the grounds and arguments regarding proportionality, we must do so against the background of deliberate deception. We must also do so against a background of the TC’s findings regarding maintenance failures.

37. We accept it is unfortunate that there will or may have been redundancies stemming from the TC’s decision to revoke the licence. But that, regrettable though it is, has to be balanced against the fact that the TC was dealing with an Operator whose directors had seen fit to mislead him and the DVSA and against the background of what it might be kind to describe as an imperfect vehicle maintenance record. Further, the TC found there had been breaches of undertakings concerning roller brake testing and the need to keep vehicles fit and serviceable (see paragraphs 39 and 40 of the TC’s written reasons). We cannot say that, despite the protestations of Kevin Young and Gwendoline Young, that the TC was plainly wrong to so conclude. We appreciate that it has been argued that an alternative form of testing which was carried out was just as effective. But when undertakings are given it is reasonable to expect that they be complied with. That is what the adjudication arm of the regulatory regime requires. Against the background of deliberate deception and breach of undertakings it cannot realistically be said that any of the TC’s decisions were disproportionate and it certainly cannot be said that the TC failed to properly consider proportionality or reached a decision as to proportionality, in the context of any of his decisions, which was plainly wrong.

38. There was also, with respect to the decision to revoke the licence, the issue of the Operator’s financial standing. The TC found that the Operator was in the region of £30,000 short of what the appropriate legislation required it to be able to demonstrate (see paragraph 41 of the TC’s written reasons). That figure was not contested before us but it was suggested that, speaking generally, the Operator was in good financial health and that this Operator would not be the only one which might struggle if required to actually comply with the applicable legislative requirements. But none of those points assists the operator. The financial standards were not met and were required to be.

39. There was an assertion made in the course of the oral hearing to the effect that Gwendoline Young had performed satisfactorily as transport manager throughout. But the maintenance failings outlined in the TC’s written reasons suggest the opposite conclusion. The TC was also rightly concerned about the fact that Gwendoline Young had been complicit in the attempt to mislead concerning the very limited involvement indeed of Edward Berry and that goes to the heart of the issue regarding her repute as transport manager. Again, we are not able to say that the TC’s decision or his approach with respect to the disqualification of her as transport manager was plainly wrong.

40. In short then, we conclude that the TC did not misapply or misunderstand the law; did not act in a way which was materially unfair whilst conducting the PI and then considering and deciding the issues before him; and did not reach findings, conclusions or an overall outcome which could be characterised as plainly wrong.

Conclusion

41. It follows from the above that this appeal to the Upper Tribunal, with respect to all of the decisions taken by the TC concerning the Operator, Kevin Young and Gwendoline Young is dismissed.

**M R Hemingway**  
**Judge of the Upper Tribunal**  
**Dated 24 August 2020**