

**IN THE DISTRICT COURT  
AT NEW PLYMOUTH**

**CIV-2015-021-000136  
[2016] NZDC 3571**

BETWEEN

RICHARD DONALD TAPLIN  
Appellant

AND

THE NEW ZEALAND TRANSPORT  
AGENCY  
Respondent

Hearing: 28 January 2016

Appearances: P J Mooney for Appellant  
K Howard for Respondent

Judgment: 9 March 2016

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**RESERVED JUDGMENT OF JUDGE G P BARKLE**

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**Introduction**

[1] This is an appeal by Mr Taplin against a decision made by the New Zealand Transport Agency (“the Agency”) to decline to issue Mr Taplin with a transport (goods) service licence.

[2] The person responsible for the decision was Mr Stewart Guy, a senior adjudicator with the Agency. Mr Guy was not satisfied that Mr Taplin was a fit and proper person to be the holder of a transport (goods) service licence (“GSL”).

**Background**

[3] Mr Taplin is aged 54. He first obtained a heavy traffic licence when aged 16.

[4] Since obtaining his licence to drive heavy vehicles I understand he has had continuous involvement in the road transport and contracting industries. For many years he ran a business in his own name that had a number of employees and operated various heavy motor vehicles.

[5] In late 2009 Redback Contracting Limited (“Redback”) was incorporated. Mr Taplin was the major shareholder and sole director. That company applied for and was granted a GSL on 7 February 2011.

[6] The Agency at the time of granting the application wrote to Mr Taplin advising that while the application was granted it was on a “without prejudice” basis. The letter drew attention to Mr Taplin’s historical traffic and criminal offences. It stated that it was prepared to grant the application but should Mr Taplin incur any further convictions/infringements or come to the attention of the Agency in the future then there could be a fresh fit and proper person assessment carried out, with the decision maker entitled to take Mr Taplin’s entire history into account. It became an issue at the appeal hearing that this letter was addressed to Mr Taplin himself when the GSL was applied for and granted to Redback.

[7] Redback went into liquidation on 9 September 2014. Mr Taplin continued to operate vehicles under Redback’s GSL until June 2015. Only at that time did Mr Taplin request the Agency to cancel the GSL for the company.

[8] Presumably as a result of that happening Mr Taplin himself applied for a GSL on 17 June 2015. The Palmerston North office of the Agency referred the application to the Agency’s senior adjudicator, Mr Guy to determine whether Mr Taplin was a fit and proper person to hold a GSL.

[9] In a letter dated 28 July 2015 and titled “notice of proposal”, Mr Guy advised Mr Taplin that he was satisfied that he was not a fit and proper person to be the holder of a GSL and subject to receipt of submissions from Mr Taplin he would decline his application.

[10] By letter dated 7 September 2015 Mr Taplin's lawyer, Mr P Mooney provided submissions to Mr Guy. The letter addressed Mr Guy's correspondence of 28 July 2015. Annexed to the letter were a copy of part of the health and safety plan of Taplin Contracting, a letter from Mr Taplin's insurance broker who had a business association of approximately 30 years with him, a copy of the Agency's proposed rating for Redback at 28 January 2015 under its operator rating system, and copies of certificates from industry courses completed by Mr Taplin.

[11] Having considered the submissions and information Mr Guy advised that his decision remained the same as outlined in his notice of proposal and that the application by Mr Taplin for a GSL was declined. The decision took effect from 11 September 2015.

## **The Law**

[12] Section 30J of the Land Transport Act 1998 ("the Act") requires a transport service operator to have a goods service licence to carry out such a service.

[13] The Agency must be satisfied that an applicant for a GSL is a fit and proper person (s 30L(1)(a)) and that all relevant requirements of the Act, regulations and rules have been complied with (s 30L(1)(d)).

[14] In making the assessment as to fitness and propriety the Agency is required to consider the relevant sections of sub-part 2 of part 4A of the Act. Those are ss 30C and 30F. Those sections are set out below:

### **30C General safety criteria**

- (1) When assessing whether or not a person is a fit and proper person in relation to any transport service, the Agency must consider, in particular, any matter that the Agency considers should be taken into account—
  - (a) in the interests of public safety; or
  - (b) to ensure that the public is protected from serious or organised criminal activity.
- (2) For the purpose of determining whether or not a person is a fit and proper person for any of the purposes of this Part, the Agency may

consider, and may give any relative weight that the Agency thinks fit having regard to the degree and nature of the person's involvement in any transport service, to the following matters:

- (a) the person's criminal history (if any):
  - (b) any offending by the person in respect of transport-related offences (including any infringement offences):
  - (c) any history of serious behavioural problems:
  - (d) any complaints made in relation to any transport service provided or operated by the person or in which the person is involved, particularly complaints made by users of the service:
  - (e) any history of persistent failure to pay fines incurred by the person in respect of transport-related offences:
  - (f) any other matter that the Agency considers it is appropriate in the public interest to take into account.
- (3) In determining whether or not a person is a fit and proper person for any of the purposes of this Part, the Agency may consider—
- (a) any conviction for an offence, whether or not—
    - (i) the conviction was in a New Zealand court; or
    - (ii) the offence was committed before the commencement of this Part or corresponding former enactment; or
    - (iii) the person incurred demerit points under this Act or a corresponding former enactment in respect of the conviction; and
  - (b) the fact that the person has been charged with any offence that is of such a nature that the public interest would seem to require that a person convicted of committing such an offence not be considered to be fit and proper for the purposes of this section.
- (4) Despite subsection (3), the Agency may take into account any other matters and evidence as the Agency considers relevant.

### **30F Additional criteria for goods service**

Without in any way limiting the matters that the Agency may have regard to under section 30C(2), when the Agency is assessing whether or not a person is a fit and proper person in relation to any goods service, the Agency must consider, in particular,—

- (a) any criminal activity conducted in the course of any transport service or transport-related business or employment:

- (b) any offending in respect of major transport-related offences, particularly offences relating to safety or to road user charges.

[15] The right of appeal against the respondent's decision is provided by s 106 of the Act. The relevant part of that section states:

**106 General right of appeal to District Court**

- (1) Any person who is dissatisfied with any decision made under this Act by the Agency in respect of the grant, issue, revocation, or suspension of a land transport document sought or held by that person may appeal to a District Court against that decision.
- (2) The court may confirm, reverse, or modify the decision appealed against.

[16] Under r 18.19 of the District Court Rules 2014 the appeal is by way of rehearing with the Court having the power to receive further evidence. In this case the Court has before it the material relied upon by Mr Guy, provided by way of an affidavit by him. Mr Taplin also filed an affidavit in support of his appeal. Both deponents gave evidence and were cross-examined at the hearing.

[17] In respect of onus and standard of proof I adopt the approach taken by Kellar DCJ in *Brown v New Zealand Transport Agency*<sup>1</sup>. This was summarised by His Honour at [32] of his decision as follows:

[32] In summary:

- (a) The appeal is a rehearing;
- (b) There is a wide discretion to accept evidence with consideration guided by relevance;
- (c) The standard of proof is the civil standard;
- (d) The statutory criteria is the essence of the appeal;
- (e) The Court is necessarily constrained by the material submitted to it;
- (f) In an unlikely situation of equipoise, the onus will be on the appellant;
- (g) The more important the question, the more cogent the evidence will be expected to be;

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<sup>1</sup> DC Dunedin CIV-2010-012-808, 14 April 2011

- (h) However, in the end it is for the appellate authority to be satisfied of the applicability of the statutory criteria to the facts.

[18] This Court has the responsibility of arriving at its own assessment of the merits of the case – see *Austin, Nichols & Co Inc v Stichting Lodestar*<sup>2</sup>. In *Kacem v Bashir*<sup>3</sup> the Supreme Court defined the nature of a general appeal as follows:

[31] The Court of Appeal discussed the application of the decision of this Court in *Austin Nichols & Co Inc v Stichting Lodestar* to the present kind of appeal. The Court correctly observed that on a general appeal of the present kind the appellate court has the responsibility of considering the merits of the case afresh. The weight it gives to the reasoning of the court or courts below is a matter for the appellate court's assessment. We should add here that if the appellate court admits further evidence, that evidence will necessarily require de novo assessment and consideration of how it affects the correctness of the decision under appeal.

### **Meaning of fit and proper person**

[19] Sections 30C and 30F of the Act contain the fitness and propriety requirements for those involved in a transport goods service. Public safety is given priority as a mandatory consideration under s 30C(1). Court decisions have also consistently emphasised public safety as the primary consideration in determining whether a person is a fit and proper person to hold a GSL.

[20] Section 30C(2) sets out matters that may be considered when deciding whether a person is a fit and proper person to hold a GSL. Compliance with the requirements relating to the transport service industry is also a relevant consideration. If a person has wilfully disregarded applicable statutory rules and regulations then that will be relevant to an assessment of whether he is a fit and proper person to control a transport service operation.

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<sup>2</sup> [2008] 2 NZLR 141

<sup>3</sup> [2010] NZSC 112

## **Agency Decision**

[21] In his notice of proposal dated 28 July 2015 Mr Guy relied on the following matters in deciding that Mr Taplin was not a fit and proper person to be the holder of a GSL:

- (a) That his personal traffic offending was long term and persistent and included offences committed while he was driving heavy commercial vehicles. A number of those offences were directly inimical to road and public safety and demonstrated behaviour which suggested a general disregard for relevant transport law.
- (b) On two separate occasions Mr Taplin had been issued with warning letters advising that the number of demerit points showing against his licence was increasing and as a result he was at risk of having his licence suspended for a period of three months.
- (c) Redback of which Mr Taplin was the “person in control” had convictions and/or infringements on the traffic register that were also inimical to road and public safety. On two occasions Redback had received infringement offences for operating vehicles in breach of s 30A(1)(a) of the Act which suggested that the operations of the vehicles constituted a risk to public safety. Whether or not Mr Taplin committed the Redback offences personally he was the person in control of the transport service provided by Redback and had a responsibility pursuant to s 4 of the Act to ensure that such offending stopped or was not committed in the first instance.
- (d) Mr Taplin received the warning letter dated 7 February 2011 referred to at paragraph [6] which set out the consequences if there was further offending by Mr Taplin or Redback.

- (e) Mr Taplin had answered the question in his application for the GSL of whether he had been convicted of any criminal offence in NZ by ticking the box with the answer “No” when that was false.
- (f) On 9 September 2014 Redback was placed in liquidation but the GSL of the company was not cancelled and the agency not advised of the company being in liquidation until 17 June 2015. In the intervening period Mr Taplin continued to certify and operate vehicles under the GSL of Redback. That was a breach of s 30J and s 79A of the Act.

[22] Mr Guy confirmed his proposed action to decline the GSL application of Mr Taplin following receipt of submissions from Mr Taplin’s lawyer. Mr Guy did not resile from that position when giving evidence at the appeal hearing. Apart from the above matters his evidence also referred to the following matters:

- (a) the maintenance plan that Mr Taplin had provided when giving evidence was regarded by Mr Guy as a statement of intent rather than an actual plan or review of maintenance that had been undertaken. Mr Guy said that in his view the plan was reactive rather than proactive and only dealt with vehicle issues as they arose;
- (b) the health and safety plan was deficient particularly because it did not include anything relating to road user charges procedures, how drivers are required to deal with log books and work time rules and regulations, nor what training was provided to his drivers by Mr Taplin;
- (c) the Agency operator rating system measured three factors: accidents, pass rate of a vehicle at first presentation for a certificate of fitness and the state of the vehicle at roadside stops by the police. Those were totally different issues by comparison with the fitness and propriety test under ss 30C and 30F of the Act; and

- (d) Mr Taplin did not have sufficient understanding of his obligations under the Act as a participant in the land transport system. Accordingly he was failing to properly manage and ensure compliance with those matters highlighted in s 4 of the Act.

### **Case for Mr Taplin**

[23] Mr Taplin annexed to his affidavit of 14 October 2015, the letter from his counsel Mr Mooney of 7 September 2015. He stated that the basis of his appeal was that there was insufficient consideration given by Mr Guy to the matters in that letter. Mr Taplin also gave evidence at the appeal hearing.

[24] In Mr Mooney's letter of 7 September 2015 the following matters were raised:

- (a) the convictions and infringements relied upon by Mr Guy covered a lengthy period of time including prior to the granting of the GSL to Redback in February 2011;
- (b) although Mr Taplin had incurred demerit points he had never been disqualified;
- (c) in any 12 month period Mr Taplin drove a number of work vehicles and his own private motor car. The estimate of Mr Taplin was that he would drive at least 140,000km each year which was approximately 3,000 km each week. Accordingly the number of infringement offences should be considered in the context of the extensive driving that Mr Taplin carries out;
- (d) where infringement fines were incurred Mr Taplin was not always the driver of those vehicles;
- (e) when the company Redback commenced operation Mr Taplin introduced a health and safety management plan for his drivers that

included an inspection procedure each driver had to undertake prior to commencing a journey in any vehicle;

- (f) the convictions or infringements relating to Redback includes matters that have been incurred by all drivers employed by that company. At various times the company had up to 11 drivers and operated a large number of trucks and trailers;
- (g) there was strong disagreement with the assertion of Mr Guy that Mr Taplin failed in his responsibilities under the Act. The reference from his insurance broker and the positive rating of Redback under the Agency operator rating system were evidence that Mr Taplin took his responsibilities seriously;
- (h) Mr Taplin understood that his prior criminal convictions were deleted after a period of seven years. This was why he had answered “no” to the question concerning prior convictions on the application form for the GSL;
- (i) Mr Taplin had not ignored the demerit point warning letters. Rather he had not been disqualified and accordingly this indicated his driving had been tempered as a result of the advice; and
- (j) that Mr Taplin thought the good service licence of Redback was personal to him and therefore he was able to use it after the company went into liquidation.

[25] In giving evidence Mr Taplin referred inter alia to the following matters:

- (a) the two offences incurred at Te Kuiti on 11 May 2013 were in a truck with registration FTU26 driven by him. Mr Taplin explained that this was a new vehicle he had taken possession of in Auckland that day. The vehicle did not have a speedometer operating for the return journey to Hawera. That and other “rattles and shakes” were going to

be attended to once the vehicle was returned to the company yard. At the same time as being stopped for speeding Mr Taplin received an infringement for not wearing a seatbelt. Normally seatbelts are not available in a heavy motor vehicle and in any event Mr Taplin said he does not believe in wearing them in a truck;

- (b) the distance licence infringement on 1 January 2014 was in his private vehicle a Toyota Prado;
- (c) two certificate of fitness infringements were incurred in 1992 which was 23 years ago;
- (d) the COF infringements of Redback on 9 January 2013 and 27 March 2013 concerned one light in a bank of lights;
- (e) the company employs a full time mechanic with checklist sheets available. The company policy was that if there was an issue with any of the vehicles then it had to be immediately attended to;
- (f) the health and safety management plan for his business had been in place for a number of years and included a pre-trip walk around inspection guide for all drivers;
- (g) the truck and trailer overloading offences of Redback on 11 September 2013 occurred as a result of the truck turntable being slightly high. The vehicles were carrying more than sufficient weight licences for the load which they were carrying. When the vehicle was stopped at Sanson Mr Taplin took immediate steps to have the configuration of the load changed;
- (h) he employed up to 17 staff and it was not always him driving the vehicles when speeding infringements were incurred;
- (i) on the three occasions he recalled when he was driving heavy vehicles for Redback when speeding infringements were incurred being on

15 February 2012 and 3 September 2013 he was travelling at the flow speed of the other vehicles on the motorway;

- (j) that he had not had a motor vehicle accident despite the extremely large distances he had driven since obtaining his licence at 16.

### **Submissions for Appellant**

[26] Mr Mooney submitted that while Mr Guy had referred to an offence schedule containing 54 offences they needed to be put in proper context. He noted that Mr Guy had said that he had put little weight on the criminal matters and accordingly three of the offences should be excluded. Two of the matters were demerit point warning letters and Mr Guy had accepted that the six log book matters could be regarded as one matter. The net result of that was to immediately reduce the total number of offences to 44.

[27] Mr Mooney noted that the majority of the offences referred to were historic with the offending dating back to 1980 and of the 44 only 15 arose in the last 12 years. While 14 offences were listed in the schedule related to Redback the last five concerned non payment of fines. More particularly with respect to heavy motor vehicles there were only three offences since 2003 listed on Mr Taplin's offending. Mr Mooney accepted that all nine matters relating to Redback concerned driving or operational matters in respect of heavy vehicles but submitted that regard should be had to the number of vehicles and staff employed by Mr Taplin.

[28] Mr Mooney further submitted that his client had a proper maintenance programme and this was apparent from the exhibit produced at the hearing by Mr Taplin and the employment of full time mechanics. Further there was a health and safety management plan which required each driver to undertake pre work inspection of the vehicles each day.

[29] Mr Mooney conceded Mr Taplin was issued the letter in February 2011 at the time of Redback being granted the GSL but the letter did no more than restate the

provisions of the Act. He noted that at that time Mr Taplin was considered a fit and proper person to operate a GSL.

[30] Furthermore there was considerable confusion on the part of Mr Taplin as to who was granted the GSL in 2011. While it was conceded the licence was in the name of the company the warning letter already referred to was written to Mr Taplin himself. Other correspondence from the agency was also addressed to Mr Taplin. He, Mr Taplin, was of the understanding that the licence was his rather than the company's. When he was alerted to that not being the position Mr Taplin had the GSL cancelled and made the present application.

[31] Mr Mooney submitted that Mr Taplin not referring to his criminal convictions was a genuine misunderstanding on his part, he believing that those being older than 7 years had no further relevance. Mr Mooney drew attention to the fact that recent speeding tickets were acknowledged by Mr Taplin in his application.

[32] While accepting that each case must be considered on its own merits and factual situation assistance could be drawn from decisions in similar cases such as *Neas v Director of Land Transport*<sup>4</sup>, *Newman v NZ Transport Agency*<sup>5</sup>, *Quittenden v NZ Transport Agency*<sup>6</sup> and *Cody v NZ Transport Agency*<sup>7</sup>.

[33] In summary Mr Mooney submitted that when the offending history is properly analysed, Mr Taplin's maintenance and health and safety management plans considered, and also Redback's positive operator system rating with the Agency all given appropriate weight the appeal by his client should be granted.

### **Respondent's Submissions**

[34] Ms Howard submitted that the respondent's decision was correct and the appeal should be dismissed for the following reasons:

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<sup>4</sup> DC Christchurch CIV-2008-009-2932, 5 November 2008

<sup>5</sup> DC Hamilton CIV-2010-019-000397, 12 August 2010

<sup>6</sup> DC Christchurch CIV-2010-009-110, 5 October 2012

<sup>7</sup> DC Hamilton CIV-2012-070-898, 19 December 2012

- (a) The appellant had failed to comply fully with his obligations as the holder of a GSL or the person in control of, or involved in, a transport service.
- (b) On two separate occasions the appellant was issued with warning letters advising that his demerit points were increasing and at those times he was at risk of having his licence suspended.
- (c) Mr Taplin was issued with a warning letter when Redback was issued a GSL as a result of the appellant's historical traffic and criminal offending. Despite that Redback had a number of convictions and infringements issued against it.
- (d) While some of Mr Taplin's personal offending was historical those matters still had relevance because a number had occurred recently, similar offending had been committed by Redback of which he was the person in control, and that the offending had occurred persistently throughout Mr Taplin's driving career.
- (e) Mr Mooney's submissions that Mr Taplin's offending should be seen in the context of the amount of driving he does is misconceived. In contrast it should be expected that professional drivers would adhere more closely to the law and the Act does not create different thresholds of offending for professional drivers. In Ms Howard's submission it is particularly important that those on the roads most frequently obey the law most carefully.
- (f) The range, nature and persistence of Mr Taplin's offending goes to the heart of the fit and proper person assessment. Of the 47 offences attributed to Mr Taplin personally 25 of those relate to his professional driving of heavy vehicles.
- (g) While it was accepted that the operator rating system rating of Redback was improving, that was a measure used for different

purposes and should be used with caution when applying it to Mr Taplin's fitness and propriety to hold a licence.

- (h) The apparent misunderstanding of Mr Taplin that the GSL of Redback was in fact his personally was not accepted. While the without prejudice warning letter dated 7 February 2011 was addressed to him personally the operative legal document being the GSL was issued in the name of Redback itself; and
- (i) At the present time Mr Taplin is not a fit and proper person to hold a GSL particularly when the focus of the regime is on matters of public safety.

## **Discussion**

### *Offending History*

[35] Both counsel spent significant time analysing the defendant's and Redback's traffic offending history. In my view the observation of Tuohy DCJ in *Sene Tuineau v NZTA*<sup>8</sup> is apposite where His Honour said:

[21] While it is possible to pick apart the appellant's traffic offending history, it is artificial to look at it in that way. Rather the whole record needs to be looked at in totality, bearing in mind the pattern it shows in the context of previous offending and warnings of one sort or another.

[36] There is some force in each counsel's submissions. Those of Mr Mooney that a good number of offences are historical and that regard should be had to the significant distance that Mr Taplin drives annually in heavy motor vehicles. Against that there is also weight in Ms Howard's submission that there is an appearance of persistence about Mr Taplin's offending and that as a professional driver he should be fully cognisant of the road rules and be careful to ensure that he complies with his obligations.

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<sup>8</sup> DC Wellington CIV-2012-085-000172, 1 June 2014

[37] There are a number of matters that give me concern and cause me to pause when giving consideration to Mr Taplin's offending history. In my view it is proper to place more weight on his recent offending.

[38] Since May 2009 there are seven speeding offences in Mr Taplin's personal history of offending. I acknowledge that three of these are speed camera offences which do not identify the driver but no steps were taken by Mr Taplin to correct the record if he was not the driver. I note he was issued a demerit point warning letter on 3 June 2014 and a little over a month later was apprehended for speeding again.

[39] In addition to those speeding matters he acknowledged that he was the driving a heavy motor vehicle licensed to Redback that incurred speeding fines on 15 February 2013 (twice) and 3 September 2013.

[40] In my view this shows an obvious propensity on the part of Mr Taplin to not comply with the required speed limit when driving.

[41] I found evidence given by Mr Taplin about some of that excess speeding offending troubling. Particularly I refer to:

- (a) On 11 May 2013 he was stopped at Te Kuiti and received infringement offences for speeding and not wearing a seatbelt. Mr Taplin's evidence was that he had picked up a new truck in Auckland and was driving the vehicle to New Plymouth, a trip of approximately 470 kilometres. The truck had no operating speedometer. That matter, along with any other 'rattles and shakes' were going to be attended to once the vehicle arrived at the company yard. Mr Taplin felt comfortable in relying on the speed of other motorists and his experience to judge the speed the truck was travelling at throughout the very lengthy journey.
- (b) Mr Taplin justified each of the speeding fines incurred in 2013 on behalf of Redback as being due to him maintaining the traffic flow on the motorways he was travelling at the material time.

[42] In my assessment the attitude exhibited by that evidence displays a somewhat cavalier attitude on Mr Taplin's part to his obligation as a road user to observe speed restrictions. Lack of compliance with required speed limits compromises public safety. Particularly when Ministry of Transport statistics show that trucks are over represented in serious and fatal accidents the importance of observance of speed limits is underlined.

[43] I do note that within Mr Taplin's recent offending history and that of Redback there are also regulatory offences which suggest an ambivalent attitude at best to such matters.

*Redback Contracting Limited*

[44] This company was incorporated by Mr Taplin in 2011. As has been set out earlier Mr Taplin received a letter addressed to him from the Agency at the time of the company being granted a transport service licence, advising that he was on notice that if there was further offending then a reassessment of his fitness and propriety to operate a transport service licence would be undertaken.

[45] While that letter may have had some effect initially, Redback acquired nine traffic related offences within a 15 month period from January 2013 to March 2014. It is no answer to that frequency of offending to refer to the number of vehicles and operators working for the company. In any event Mr Taplin acknowledged he was driving vehicles for the company when some of the offences took place. Within a short time of the company acquiring its last infringement offence it went into liquidation.

[46] As the principal of the company Mr Taplin had the responsibility to ensure that offending did not take place. Furthermore he had been put on notice that the Agency would be closely monitoring the company and him but that was not sufficient to ensure that offending did not take place.

*Continuing to operate Redback following liquidation:*

[47] Redback by company resolution was placed in liquidation on 9 September 2014. The GSL for the company was not cancelled by the Agency until June 2015 following advice at that time from Mr Taplin. In the intervening period he continued to operate heavy vehicles in reliance on the GSL of Redback.

[48] I do not accept Mr Taplin's explanation that this happened because he thought the licence was his personally. He explained in evidence that this was due to the letter from the Agency of 7 February 2011 being addressed to him. This was not a credible position to hold. Redback operated for a period of three and a half years with the GSL and the document recording the licence was in the company name. Mr Taplin had a hands on role in the management of the company and not only should have known but in my assessment would have known that the company held the GSL.

[49] In my view his position reflects a somewhat laissez faire approach to management and regulatory compliance issues, in particular that Mr Taplin continued to operate heavy vehicles under Redback's GSL for months after it went into liquidation.

*Health and Safety and Management Plan*

[50] Mr Taplin supplied a health and safety plan as part of his counsel's submissions to the Agency of September 2015 and produced a service and maintenance plan as an exhibit when giving evidence.

[51] When cross-examined about deficiencies in the health and safety plan Mr Taplin protested that all he thought was required to be provided was the four pages produced and said that there was a more fulsome document in existence. He also disputed that the criticism of the management plan as being reactive rather than proactive was fair.

[52] While the rudimentary standard of these documents is not determinative of the Court's decision they contribute to the view that Mr Taplin will do no more than what he believes is necessary to comply with regulatory requirements. Unfortunately in my assessment that belief on Mr Taplin's part is misplaced and results in him falling short of the necessary standard.

### **Outcome**

[53] In summary I have determined that Mr Taplin is not a fit and proper person to hold a GSL for the following reasons:

- (a) His recent offending history and particularly the prevalence of speeding infringements;
- (b) The explanations provided in evidence as to why the four recent speeding infringements in heavy vehicles took place;
- (c) The number of offences committed by Redback especially when Mr Taplin had been put on notice by the without prejudice letter of 7 February 2011 that his prior amount of offending meant the operation of Redback would be under close scrutiny;
- (d) His ambivalent attitude to legal and regulatory requirements as exhibited by:
  - (i) continuing to operate the GSL of Redback after it was placed in liquidation;
  - (ii) the rudimentary nature of the maintenance and health and safety plans presented to the Court by Mr Taplin.

[54] Accordingly the appeal by the appellant is dismissed.

## **Costs**

[55] The respondent is entitled to costs on a 2B basis pursuant to the District Court Rules 2014. If counsel are unable to settle those within 20 working days of this decision then memoranda can be filed, first by the respondent five working days after the period has expired and the appellant five working days thereafter. Neither memoranda is to exceed three pages.

G P Barkle  
District Court Judge