

[2014] NZSHD 4

SHD Number 725212

IN THE MATTER

of the Secondhand Dealers and
Pawnbrokers Act 2004

AND

IN THE MATTER

of a Police Complaint against
JOHN HENRY BEAUCHAMP of
Christchurch pursuant to s.29 of
the Act

**BEFORE THE LICENSING AUTHORITY OF
SECONDHAND DEALERS AND PAWNBROKERS**

DECISION

Introduction

[1] This is a Complaint by the Police against Mr. John Henry Beauchamp of Christchurch in respect of Individual Licence number 725212 issued to Mr. Beauchamp on 17 January 2007 (and renewed in 2012) by the Licensing Authority of Secondhand Dealers and Pawnbrokers (“the Authority”) under the Secondhand Dealers and Pawnbrokers Act 2004 (“the Act”).

[2] Mr. Beauchamp’s licence is currently due to expire on 17 January 2017.

[3] The Police Complaint is dated 4 January 2014. It was received by the Authority on 9 January 2014.

[4] Mr. Beauchamp operates a business called Beachy’s Auto Spares (“Beachys”) situated at 9 Barbour Street, Waltham, Christchurch. Mr. Beauchamp purchases motor vehicles for dismantling. Once the motor vehicles are dismantled the usable vehicle parts are retained for sale and the car bodies sold as scrap. Many of the motor vehicles are purchased on a regular basis from Turners Car Auctions (“Turners”).

[5] On 29 August 2013, Detective Parker of the Christchurch Police completed a Police check of Beachys following information received that a stolen Nissan Bluebird ARX motor vehicle (registration number XW6455) had been taken there. Detective Parker discovered that Mr. Beauchamp had dismantled the vehicle and only the engine remained on the premises. The engine did not have a label attached.

[6] A check of the dealers record (“record book”) at Beachys revealed also, despite the fact that Mr. Beauchamp’s record keeping was not all it should be, that a number of other stolen vehicles had passed through the premises and that the name “Dennis Tunnickliffe” was associated with some of them. Dennis Tunnickliffe is well known to the Police.

[7] Detective Parker took a written statement from Mr. Beauchamp on the day of his visit and this has been produced as part of the Police evidence.

[8] On 16 September 2013 Dennis Tunncliffe was interviewed by Detective Parker. He admitted stealing a number of motor vehicles and said that he had taken 10 to 12 of these vehicles to Beachys because Mr. Beauchamp did not ask questions and would just hand over the cash. A DVD of this interview has been supplied to the Authority as part of the Police evidence.

[9] Dennis Tunncliffe was subsequently charged by the Police. He pleaded guilty and was convicted and sentenced on charges of the Theft (x3) and Receiving (x1) in respect of four of the motor vehicles which were identified in the record book at Beachys.

[10] Detective Parker also discovered that Beachys had been visited 10 months earlier by another Police squad in October 2012 and at that time Mr. Beauchamp's record book was found to be inadequate. On that occasion Mr. Beauchamp was given instructions by Detective Janelle Kerr in terms of proper record keeping under the Act. Detective Kerr noted also that the name "Dennis Tunncliffe" appeared in Beachys record book. She therefore pointed out to Mr. Beauchamp that Mr Tunncliffe was known to the Police for stealing cars.

[11] Despite this the Police say Mr. Beauchamp continued to buy stolen cars from Dennis Tunncliffe.

[12] On 5 December 2013 Detective Parker interviewed Mr. Beauchamp on DVD at the Christchurch Police Station. A DVD of this interview has been submitted to the Authority as part of the Police evidence.

[13] The Police Complaint to the Authority followed on 4 January 2014.

Relevant provisions of the Act

[14] Part 3 of the Act (Subparts 1 and 2) spell out the obligations for licensed secondhand dealers under the Act.

[15] Licence holders are required to display their licences, keep proper employee records and comply with certain requests from the Police. They have obligations to report and hold stolen goods, keep proper dealers records, verify the identity of sellers, label articles and retain articles in an unaltered state for a period of 14 days from the date of the transaction.

[16] These provisions are in line with the purpose of the Act which is defined in s.3 of the Act:

- [a] To make it harder for criminals to dispose of stolen goods through secondhand dealers and pawnbrokers; and
- [b] to make it easier for the Police to recover stolen goods and solve property crimes.

[17] Breaches of these provisions are offences against the Act. Penalties are provided, typically with a maximum fine of \$10,000. This reflects how seriously breaches of the provisions are to be regarded.

[18] The Police Complaint was filed under s.29(1) of the Act and a copy of the Complaint was sent to Mr. Beauchamp pursuant to s.29(2). At the same time he was advised, in terms of s.26(1)(a) and (b) of the Act, that he was entitled to request a hearing in person before the Authority, or instead could make written submissions in response to the Complaint.

[19] It is noted here that sections 26 and 27 of the Act, although referring specifically to Police 'Objections' rather than Police 'Complaints', are also applicable to Police 'Complaints' by virtue of s.29(2) of the Act.

[20] Mr. Beauchamp has chosen to forgo his right to a hearing in person before the Authority and has instead filed written submissions through his counsel, Mr Hamish Davies, pursuant to s.26(1)(b) of the Act.

[21] Section 26(3) of the Act provides that in such a situation the Authority must, on the basis of the written material before him or her, determine whether to uphold or dismiss the Police Complaint.

[22] The question for the Authority pursuant to s. 25(1) of the Act is whether, in light of the information communicated to it, Mr. Beauchamp is *a fit and proper person* to hold a certificate and thus a licence.

Motor Vehicle Accessories and Parts

[23] Because this Decision deals specifically with the acquisition of functioning motor vehicles by a secondhand dealer for the purposes of dismantling, where some parts of the vehicle are sold for scrap and other parts are retained for on-selling, it is appropriate at this point to explain how the definition of 'article' in the Act is to be interpreted.

[24] Section 4 and Schedule 1 of the Act define an 'article' for the purposes of the Act.

s.4 Interpretation

In this Act, unless the context otherwise requires,-

article means an article of a type listed in Schedule 1 (as from time to time amended by regulations made under this Act)

Schedule 1

The following are articles for the purposes of this Act:

- (a) bicycles and bicycle spare parts and accessories:
- (b) ...
- (q) motor vehicle (including motor cycle) accessories and parts:

[25] The position adopted by the former Authority in respect of motor vehicle parts and accessories was that they were only considered as 'articles' under the Act when they were acquired by a secondhand dealer as parts and accessories. They were not considered to be 'articles' when they were acquired as part of a whole motor vehicle which was subsequently dismantled; some parts then being salvaged and the remainder disposed of as scrap metal.¹

[26] It is noted however that the definition of 'article' in Schedule 1 makes no reference to the *purpose* for which, or *form* in which, the item was acquired. On a plain reading of the Act a motor vehicle part or accessory is an 'article' simply because it is listed in that definition.

[27] The decision in *Re Warren* makes no mention either of the purpose of the Act as contained in s.3 of the Act, and the obiter statements on 'articles' in that decision appear to be at odds with the purpose of the Act.

[28] The definition of 'scrap metal' as set out in s.4 of the Act should also be considered here, and in particular the reference to 'old metal goods'. Section 4 defines scrap metal in the following way:

scrap metal does not include copper in any form, but includes-

- (a) old metal, broken metal, partly manufactured metal goods, defaced or old metal goods, and metal residues from manufacturing processes; and
- (b) items that-
 - (i) are made entirely or substantially of metal; and
 - (ii) are no longer fit for the purpose for which they were designed or intended

[29] The principle of *generalia specialibus non derogant* indicates that the specific definition of 'article' in Schedule 1 should trump the broad definition of 'scrap metal' in paragraph (a) above. While this maxim is often inapplicable, here it is supported by the purpose and scheme of the Act. If motor vehicle parts and accessories could be treated as scrap metal simply because they were also 'old metal goods' secondhand dealers would be able to circumvent the specific provisions relating to articles in almost every circumstance, as the Act deals specifically with secondhand goods which are, by their very nature, likely to be 'old'.

[30] On the other hand the Authority considers that the more specific language of paragraph (b) above allows articles to become scrap metal if they are no longer fit for the purpose for which they were designed or intended. Here the principle of *generalia specialibus non derogant* does not apply. Such an interpretation is not at odds with the purpose of the Act as the recovery of goods is far less important if those goods are no longer in working condition.

[31] As for complete motor vehicles it seems clear according to Schedule 1 of the Act that they are not 'articles' in and of themselves and to hold otherwise would conflict with the Motor Vehicle Sales Act 2003 by purportedly allowing for the sale of

¹ *Re Warren Metals Ltd and Halloran* [2008] NZSHD 24 (28 August 2008) at [16]-[21]; *Re Shepherd* [2006] NZSHD 34 (18 October 2006) at [28]; *Re Edwards* [2006] NZSHD 37 (29 November 2006) at [24].

motor vehicles by secondhand dealers without the need for them also to be licensed as a 'motor vehicle trader'.

[32] This Authority considers therefore that whereas a motor vehicle as a whole is not an article, the component vehicle parts and accessories are 'articles' for the purposes of the Act, unless they are no longer fit for purpose.

[33] In the present case there has been no suggestion from Mr. Beauchamp that any of the motor vehicles parts and accessories extracted from purchased vehicles following the dismantling were not fit for purpose. On the contrary it is clear that the car engines were very much still a very useful and saleable commodity for him.

The Police Evidence – Detective Janelle Kerr

[34] Detective Janelle Kerr of the Christchurch Police visited Beachys on 17 October 2012 as part of a Police team tasked with visiting secondhand dealers and checking compliance. She has provided the Authority with copies of a job sheet and notebook entry in relation to her visit. Unfortunately other relevant job sheets were for some reason deleted during the move to the new Central Police building.

[35] Detective Kerr is however able to confirm the following:

- [a] At the time of her visit to Beachys she was aware that Dennis Tunncliffe and a man called Sharn Noble had recently been arrested for unlawfully taking motor vehicles.
- [b] Police had also received information that Beachys was known as a place to take stolen cars.
- [c] She noted that Dennis Tunncliffe's name featured in Mr. Beauchamp's record book in relation to the purchase of Toyota motor vehicle (registration number WK246) but that Mr. Beauchamp had failed to record Tunncliffe's proof of identity.
- [d] As a result she says she would definitely have advised Mr. Beauchamp that Dennis Tunncliffe was known to the Police for stealing cars.
- [e] She noted also that two motor vehicles (a Sentra, registration number RR9641 and a Subaru, registration number TY2476) were recorded as having been purchased from a *Brent* Tunncliffe, who gave the same address as *Dennis* Tunncliffe, and once again there was no proof of identity listed alongside these entries in the record book.
- [f] She explained the requirements of the Act to Mr. Beauchamp and in particular advised him that he must keep proper records and verify the identity of sellers.
- [g] She also told Mr. Beauchamp that he had an obligation to hold vehicles for 14 days before crushing them.

The Police Evidence – Dennis Tunncliffe

[36] Dennis Tunncliffe was interviewed by Detective Parker under caution at Christchurch Prison on 16 October 2013. The interview was recorded on DVD. Tunncliffe provided the following information:

- [a] In relation to Nissan Cefiro motor vehicle BET608 (listed in Mr. Beauchamp's record book with the date 19 March 2013) Tunncliffe says that on 19 March 2013 he sold this vehicle to Beachys. He used his own name. He got the vehicle from his mate Sharn Noble for \$50.00 the day after it was stolen. He sold it to Beachys for \$250 or \$300 the same day. He said that Beachy (Mr. Beauchamp) doesn't ask questions.
- [b] He had sold 10 to 12 vehicles to Beachys since 2012.
- [c] He sometimes used his Prison ID as proof of identity.
- [d] He would sometimes take vehicles to Beachys with no registration plates, with the registration removed and with the VIN number smashed in with a tomahawk.
- [e] The name '*Brent* Tunncliffe', as recorded in Beachys record book, is in fact his brother's name but he doesn't use *Brent's* name any more because he is too much of a goody good.
- [f] He usually takes Subaru cars rather than Bluebirds to Beachys but they don't get recorded as Subarus. Beachy normally strips them and gets rid of them.
- [g] Beachy doesn't record the details or ask questions. He just hands over the cash.
- [h] The only reason Beachy would record details of sellers in his record book is if his worker AJ is present. That's the only reason his name (i.e. Dennis Tunncliffe) is in the book.
- [i] Everyone takes cars to Beachys.
- [j] He was never told by Mr. Beauchamp not to come to his yard.

[37] A Police Summary of Facts submitted as part of the Police evidence which refers to 3 charges of Theft and one charge of Receiving, and to which Dennis Tunncliffe pleaded guilty, contains the following information:

- [a] Dennis Tunncliffe stole a 1992 Nissan Sentra valued at \$1,000 from Beckenham on 30 August 2012 and sold it to Beachys for scrap on 1 September 2012.
- [b] He stole a 1996 Subaru Impreza valued at \$2,300 from Halswell on 3 September 2012 and sold it to Beachys for scrap on 4 September 2012.

- [c] He purchased a stolen 1994 Nissan Cefiro valued at \$2,000 from an associate on 19 March 2013 and sold it the same day to Beachys for \$250-\$300.
- [d] He stole a 1992 Nissan Bluebird valued at \$1,000 from Phillipstown on 20 April 2013 and sold it to Beachys for scrap on 21 September 2013.
- [e] All four stolen vehicles sold to Beachys were dismantled and unable to be recovered by the Police.
- [f] He admitted to the Police he had taken 10 to 12 stolen vehicles to Beachys since 2012.

[38] It is noted that according to Dennis Tunncliffe he sold two of the stolen vehicles above (the Nissan Sentra and the Subaru Impreza) to Beachys before the visit by Detective Kerr on 17 October 2012, and the other two after her visit.

[39] It is the Police submission that although Detective Kerr copied into her notebook the details of the Nissan Sentra and Subaru Impreza as recorded in Mr. Beauchamp's record book, she did not recognise them as stolen vehicles because Mr. Beauchamp had recorded false registration plate details for them. (See paragraph 49 below).

[40] It is noted also that Mr. Beauchamp has recorded the seller of the Nissan Sentra and the Subaru Impreza as being *Brent* Tunncliffe (rather than *Dennis* Tunncliffe) and in both cases has not recorded any proof of identification.

[41] It is noted further that Dennis Tunncliffe has pleaded guilty to stealing these two vehicles and selling them to Beachys.

The Police Evidence – Detective David Parker

[42] Detective Parker visited Beachys on 29 August 2013 after receiving information that a stolen motor vehicle (Nissan Bluebird XW6455) had recently been taken there by one Jonathan Miller.

[43] Detective Parker found details of this vehicle were recorded in Mr. Beauchamp's record book which shows it was purchased on 23 August 2013, 6 days before Detective Parker's visit.

[44] The seller is shown as 'Johnathan Miller' of 60 Waltham Road. No purchase price is listed.

[45] The car had been stolen from Woolston on the evening of 22 August 2013. The vehicle itself had already been dismantled and the only remaining part on the premises was the engine. There was no label or number assigned to the engine.

[46] When the owner of XW6455 was contacted (Stephanie Knight) she said there were 3 keys to the vehicle and they were still in her possession at the time the car was stolen.

[47] Detective Parker took a written statement from Mr. Beauchamp on 29 August 2013. In it he says amongst other things:

- [a] Only a small percentage of the cars he purchases are from private buyers, perhaps 3 to 5 per month. Most are from Turners.
- [b] He dismantles the cars. The engines are sold on site or are sent overseas. The shells of the vehicles go to Sims Pacific Metals ("Sims") for \$120 per tonne.
- [c] He holds privately purchased vehicles for 1 to 2 weeks before they are dismantled. It depends how much room he has.
- [d] He paid \$200 for the Nissan Bluebird XW6455. It was in working condition. He said that *the car had its key* (Ms Knight says she retained all the keys) and its registration was current. He asked the seller to take the plates with him. He dismantled the car 4 or 5 days later because he had cars coming from Turners and he needed the room. (Documentation from Turners confirms Mr. Beauchamp was expecting vehicles around that time).
- [e] He knows he is required to keep cars for 1 – 2 weeks and tries to do this normally.

[48] Detective Parker then carried out checks on other registration numbers in the record book. He discovered that there were four vehicles purchased from Dennis Tunncliffe with details as follows:

- [a] WK246 – probably June 2011 but no date not filled in – Toyota. Seller's name is Dennis Tunncliffe. No proof of identity. No purchase price listed.
- [b] BET608 – 19 March 2013 – Cefiro – Seller's name is Dennis Tunncliffe. Proof of identity is his Prison ID number 80468237. No purchase price listed. *n.b. Dennis Tunncliffe pleaded guilty to a charge of Receiving in relation to this vehicle.*
- [c] SB8990 – 19 April 2013 – Bluebird - Seller's name is Dennis Tunncliffe. Proof of identity is his Prison ID number 80468237. No purchase price listed. *n.b. Police enquiries revealed that the incorrect registration number has been recorded for this transaction.*
- [d] CW4944 – 21 April 2013 – Bluebird - Seller's name is Dennis Tunncliffe. Proof of identity is his Prison ID number 80468237. No purchase price listed. *n.b. (1) Police enquiries revealed that the incorrect registration number has been recorded for this transaction. (2) Dennis Tunncliffe pleaded guilty to a charge of Theft in relation to this vehicle.*

[49] There were also two vehicles recorded in the record book in respect of which the name of the seller was listed as *Brent* Tunncliffe.

- [a] RR9641 – 1 September 2012 – Sentra – Seller's name Brent Tunncliffe. No proof of identity. No purchase price listed. *n.b. (1) Detective Kerr copied these details into her notebook on 17 October 2012 but did not realise the vehicle was stolen probably because the registration number was wrongly recorded. (2) Dennis Tunncliffe pleaded guilty to a charge of*

Theft in relation to this vehicle. (3) Correct registration number should be RR9441.

- [b] TY2476 – 4 September 2012 – Subaru – Seller's name Brent Tunncliffe. No proof of identity. No purchase price listed. *n.b. (1) Detective Kerr copied these details into her notebook on 17 October 2012 but did not realise the vehicle was stolen probably because the registration number was wrongly recorded. (2) Dennis Tunncliffe pleaded guilty to a charge of Theft in relation to this vehicle. (3) Correct registration number should be TX9476.*

[50] Detective Parker also discovered 4 other motor vehicle entries in Mr. Beauchamp's record book which caused him some concern. On checking the 3 number plates listed below on the Police system to see if they were stolen he found they were not listed to motor vehicles:

- [a] 31 October 2012 – CM6219.
- [b] 14 March 2013 – BISFCA
- [c] 13 April 2013 – PPF338

[51] On checking plate AWU928, recorded in Mr. Beauchamp's record book as a Corolla purchased on 6 March 2013, Detective Parker discovered it was in fact a Nissan from an Auckland address. *The Authority notes here that the Police have not provided the Authority with the result of their enquiries, if any, into the persons listed in the record book as the sellers of the four cars referred to in these two paragraphs.*

[52] Detective Parker interviewed Mr. Beauchamp under caution on DVD on 5 December 2013. Mr. Beauchamp made the following comments;

- [a] He mainly buys cars from Turners or Manheims. At most he would buy 10 cars a month privately.
- [b] He dismantles the cars, keeps the good parts e.g. the engines and then the bodies go to Sims for scrap.
- [c] Prior to the visit by Detective Kerr he did not keep private purchases for very long – less than a week or two. Now it is 2 weeks.
- [d] He has not been keeping records of car engines, just records details on the invoice when he sells one. He never gives engines 'article' numbers.
- [e] Most of the writing in the record book is his.
- [f] He is aware he should record details of purchases.
- [g] He does not record purchase price.
- [h] He accepts that he has incorrectly recorded the registration plate details of the purchases of RR9641 (on 1 September 2012) and TY2476 (on 4 September 2012) in his record book.

- [i] He accepts that Police enquiries have revealed that the correct registration plate details should be RR9441 and TX9476 and that these were stolen vehicles. He says these were genuine mistakes on his part.
- [j] Everything brought to him by Dennis Tunncliffe is in his record book.
- [k] He recalls the Police visit by Detective Kerr in 2012. He was told he needed to keep better records, and that sellers' identities needed to be verified.
- [l] He agrees that Detective Kerr told him he was obliged to keep vehicles for 14 days.
- [m] He accepts that at the time of Kerr's visit Dennis Tunncliffe and Sharn Noble had recently been locked up for unlawfully taking motor vehicles and had named Beachys as a place to take their stolen cars.
- [n] He says Detective Kerr picked out Dennis Tunncliffe's name in his record book right away.
- [o] After the visit by Detective Kerr he says he did not want to deal with Dennis Tunncliffe. When Dennis Tunncliffe later brought a car to him he said to him "*I don't want to deal with you anymore. The Police have been around and they told me that you have been involved with you know, (pause) I do not know if stolen cars or what, but she said he was a person of interest (sic).*"
- [p] Later he says he thinks Detective Kerr told him Dennis Tunncliffe had been in prison for taking cars and this was the reason he told Tunncliffe not to bring cars to him anymore.
- [q] He says he phoned Detective Senior Sergeant Rae ("DSS Rae") of the Christchurch Police after Kerr's visit and told him that Dennis Tunncliffe had just brought in a car. He says he rang DSS Rae because he had heard Dennis Tunncliffe had been in prison for taking cars. He says he told DSS Rae that he had told Tunncliffe not to call in again.
- [r] He says he believes that on one occasion Dennis Tunncliffe stole one of Beauchamp's own cars from his yard across the road. It was a Laser and Tunncliffe drove it away with no plates on it. He says he reported this to the Police
- [s] He is shown and views copies of pages of his record book which show that he has purchased vehicles from Dennis Tunncliffe on 19 March 2013, 19 April 2013 and 21 April 2013. On each occasion Tunncliffe's form of identification is listed as his Prison ID.
- [t] It is explained to him that a number of his vehicle purchases were stolen cars and that Dennis Tunncliffe had pleaded guilty in respect of four of these.
- [u] He identifies Dennis Tunncliffe in a photo shown to him by Detective Parker.

- [v] It is pointed out to him that his entry in the record book on 21 April 2013 which reads registration number CW4944 was recorded incorrectly and should have been WC4944, which is a stolen vehicle. (*Dennis Tunnicliffe pleaded guilty to stealing this car.*)
- [w] It is also pointed out to him that this date (21 April 2013) and dates that the two other cars were brought to him by Dennis Tunnicliffe (BET608 on 14 March 2013 and SB8990 on 19 April 2013) are at a time after he had allegedly told Dennis Tunnicliffe not to come to him with cars. His response is "*I couldn't remember the dates he brought them in but it is all there in writing*".
- [x] He says he never looks at vehicle VIN numbers or identifying features on cars, just plate numbers. He never noticed smashed in VIN numbers.
- [y] He denies Dennis Tunnicliffe brought 10 to 12 cars to him in the last year and also denies some other allegations by Tunnicliffe.
- [z] After Dennis Tunnicliffe brought in a couple of cars he asked Tunnicliffe where he got them. He was told Tunnicliffe got cars from his father on the West Coast.
- [aa] He says he recorded everything religiously in his book and he is adamant that everything he bought from Dennis Tunnicliffe is in the book.
- [bb] He also says that most of the cars from Dennis Tunnicliffe were de-registered with no plates or stickers and that he can't believe Tunnicliffe drove them on the road.
- [cc] Later he changes his story and says there were only a couple of cars that came without plates.
- [dd] He says that Dennis Tunnicliffe used his Prison ID for identification because he did not have a driver's licence. The Prison ID had a photo and a number.
- [ee] He says he usually writes only the make of vehicle and not the model because he is busy.
- [ff] He only bought one Subaru from Dennis Tunnicliffe.
- [gg] Dennis Tunnicliffe told him he had de-registered some of the vehicles he brought to him.

The Police Evidence – Detective Senior Sergeant John Rae

[53] Detective Parker contacted DSS Rae on 13 February 2014 and provided him with a copy of Mr. Davies' submissions contained in a letter which sets out Mr. Beauchamp's formal response to the Police Complaint. Detective Parker specifically alerted DSS Rae to the fact that Mr. Beauchamp was claiming that he had mentioned the name "Dennis Tunnicliffe" to the Senior Sergeant.

[54] Mr. Davies' letter claims that Dennis Tunnicliffe came to see Mr. Beauchamp with a car *after Detective Parker's visit on 29 August 2013* and that Mr. Beauchamp told Tunnicliffe he was no longer welcome and he would not be purchasing vehicles from him.

[55] The letter further claims that Mr. Beauchamp telephoned DSS Rae after Detective Parker's visit and informed him that Dennis Tunnicliffe was still attempting to sell vehicles and that he had sent him away.

[56] DSS Rae has checked his notebook. Copies of the relevant entries and an email explaining his contact with Mr. Beauchamp have been produced as part of the Police evidence. They reveal the following:

- [a] Mr. Beauchamp contacted DSS Rae on 18 October 2012, the day after Detective Kerr's visit to Beachys, (*and not after Detective Parker's visit on 29 August 2013*).
- [b] They spoke about Mr. Beauchamp obtaining cars from Turners, his having only a small yard and the difficulty in holding cars for 14 days. They discussed whether or not Mr. Beauchamp was required under the Act to hold onto cars for 14 days when he bought them from an institution such as Turners.
- [c] DSS Rae checked with Turners and then contacted Mr. Beauchamp on 25 October 2012. He advised him that Turners had the relevant licences which meant that vehicles purchased from Turners did not have to be retained for 14 days.
- [d] DSS Rae says he has no other notebook entries in respect of Mr. Beauchamp other than those for 18 and 25 October 2012.
- [e] He says from memory he only spoke to Mr. Beauchamp on those 2 occasions.
- [f] He has checked his notebooks from 19 September 2012 to 9 November 2012.
- [g] He says that nowhere has he recorded any mention of Mr. Beauchamp telling him about any particular person bringing cars to him (i.e. Dennis Tunnicliffe).

Mr. Beauchamp's Written Responses to the Police Complaint

Re Detective Kerr's Visit

[57] Mr. Beauchamp says firstly that during Detective Kerr's visit to Beachys on 17 October 2012 she did not advise him why the Police were investigating Dennis Tunnicliffe, in particular in respect of stolen cars.

[58] Because a number of Detective Kerr's relevant job sheets have been deleted she is forced to rely on memory in relation to her visit nearly a year earlier. Therefore her version of events is seriously called into question.

[59] At the time of Detective Kerr's visit Mr. Beauchamp was not given a notice from the Police that any vehicles were stolen or alleged to be stolen. Consequently he was not under any obligation under s.39 of the Act to cease dealings with Tunncliffe or to notify the Police of any subsequent transactions with him.

Re Dealings with Dennis Tunncliffe

[60] Mr. Beauchamp purchased 3 cars from Tunncliffe before Detective Kerr's visit and three vehicles after that date. All six are recorded in the record book.

[61] The record book meets the requirements of s.42 of the Act.

[62] In relation to the purchase of WK246 on 26 June 2011 there is a minor error in the record book where the registration number is listed in the wrong column but this is inconsequential. Although there is no form of identification listed, Mr. Beauchamp purchased the vehicle on the condition Tunncliffe provided identification at a later date. Tunncliffe provided proper identification in the form of his Prison ID for subsequent transactions with Mr. Beauchamp.

Re Detective Parker's Visit

[63] On 29 August 2013 Detective Parker was investigating Johnathan Miller and a stolen Nissan Bluebird XW6455.

[64] This purchase was correctly recorded in Mr. Beauchamp's record book on 23 August 2013. Mr. Beauchamp did not know the vehicle was stolen.

[65] Mr. Beauchamp's only mistake was to dismantle the car within 14 days. He did so because he needed space for the more valuable vehicles coming from Turners and Manheims.

[66] Ten invoices from Turners are produced to show that 10 vehicles were purchased by Mr. Beauchamp from Turners at auction on 21 August 2013. A receipt for payment is dated 28 August 2013. *It is not clear from these documents when these vehicles arrived at Mr. Beauchamp's yard, but Mr. Beauchamp says it was the same week that the Nissan Bluebird XW6455 arrived.*

[67] Seven vehicles from Manheims also arrived the same week as the Nissan Bluebird.

[68] A signed letter from Mr. Beauchamp's employee, Ajai Prasad, has been submitted which confirms Mr. Beauchamp's position that he now normally ensures cars are kept for a minimum of 14 days and requires ID to be included in his record book.

Re Having No Further Transactions With Tunncliffe

[69] It was only when Detective Parker visited Beachys on 29 August 2013 and took a statement from him that Mr. Beauchamp became aware that the Police were interested in Dennis Tunncliffe for his involvement with stolen cars.

[70] From that moment he ceased all dealings with Dennis Tunncliffe.

[71] His last dealing with him was on 21 April 2013.

[72] When Dennis Tunnicliffe came to see him on a date after Detective Parker's visit he told Tunnicliffe he was no longer welcome and he would not be purchasing vehicles from him.

[73] At that time he rang DSS Rae and told him that Tunnicliffe was still attempting to sell vehicles and he had sent him away.

Other Matters

[74] All vehicles purchased from Dennis Tunnicliffe are correctly recorded in the record book.

[75] Mr. Beauchamp has never purchased a vehicle that has not been subsequently recorded in the record book.

[76] Mr. Beauchamp has been in the business of dealing in secondhand cars for 45 years and has a clean record.

[77] Beachys is Mr. Beauchamp's livelihood. He would not risk his licence for the sake of 6 vehicles which are not of particularly high value.

[78] Because of this ordeal, Mr. Beauchamp has undertaken only to purchase from registered auctioneers such as Turners and Manheims in the future. He will no longer undertake private transactions as the risk is too great for him and his business.

Discussion

[79] The Police have chosen not to lay any charges against Mr. Beauchamp but have opted instead to place the result of their enquiries before the Authority in the form of a Complaint and they ask that his licence be cancelled.

[80] Unhelpfully the Police have not organised their material or comprehensively summarised their evidence with the result that the Authority has had to sort through all of the submitted material to get the necessary details of the relevant issues.

[81] In particular the Authority notes no transcripts of the two DVD interviews have been provided by the Police with the result that the Authority has had to spend some time viewing and reviewing the actual DVDs of the interviews themselves. It is noted that Authority staff are not permitted to view and transcribe such Police interviews.

[82] In future the Authority would like to receive from the Police transcripts of any recordings of Police interviews submitted in evidence. A comprehensive schedule of vehicles, plate numbers, dates, sellers, identity verification and other relevant information would also be helpful. This would also assist licence holders and their lawyers when dealing with a Police Complaint.

[83] In essence in this case the Police say that Mr. Beauchamp is at the very least inclined to turn a blind eye to the possibility that motor vehicles he is purchasing are stolen, and that he is well known in the community as someone who will purchase stolen vehicles without asking questions.

[84] The Police point out Mr. Beauchamp's inadequate record keeping, and the fact that he had made car purchases from thief Dennis Tunnicliffe before the routine visit by Detective Kerr in October 2102, and continued to buy stolen vehicles from Mr Tunnicliffe even after being specifically advised by Detective Kerr that Tunnicliffe was known to the Police as a car thief.

[85] Dennis Tunnicliffe's name appears in Mr. Beauchamp's record book 3 times after Detective Kerr's visit to his premises.

[86] Dennis Tunnicliffe has pleaded guilty to four charges in respect of motor vehicles sold to Beachys and has been sentenced.

[87] In response Mr. Beauchamp says (through Mr. Davies) that he has been in business without trouble for 45 years.

[88] He says (through Mr. Davies) that Detective Kerr did not advise him that the Police were investigating Dennis Tunnicliffe for stolen cars and therefore he was not on notice in respect of Mr Tunnicliffe, and was not under an obligation to notify the Police of subsequent transactions with him.

[89] Mr. Beauchamp says all purchases excepting minor errors have been recorded by him in his book.

[90] He says his only mistake was to dismantle the car from Jonathan Miller within 14 days because he had cars coming from Turners and Manheims.

[91] Mr. Beauchamp says (through Mr. Davies) that it was only when Detective Parker visited him on 29 August 2013 that he became aware that the Police were interested in Dennis Tunnicliffe for his involvement with stolen cars. He therefore ceased dealings with him and when Tunnicliffe turned up next he contacted DSS Rae.

Analysis of the Evidence

[92] It is clear to the Authority on the evidence that when Detective Kerr visited Beachys on 17 October 2012 she advised Mr. Beauchamp that Dennis Tunnicliffe was a car thief. Detective Kerr was aware at that time that Dennis Tunnicliffe and Sharn Noble had recently been arrested for unlawfully taking motor vehicles and that they had provided information to the Police that Beachys was a place to take stolen cars.

[93] It is noted that during her visit Detective Kerr specifically copied into her notebook the details of the three entries in Beachy's record book relating to purchases of cars from Dennis Tunnicliffe and Brent Tunnicliffe. In all three cases Mr. Beauchamp had failed to verify of the identity of the seller in his record book. Dennis Tunnicliffe had used his brother's name for two of the transactions

[94] The Authority considers it significant that the following *written submissions* on behalf of Mr. Beauchamp are contradicted by *his own answers* to Detective Parker during his DVD interview. The written submissions claim that:

- [a] During her visit to Beachys Detective Kerr did not advise Mr. Beauchamp why the Police were investigating Dennis Tunncliffe, in particular in respect of stolen cars,
- [b] It was only after Detective Parker's visit on 29 August 2013 that Mr. Beauchamp became aware that the Police were interested in Dennis Tunncliffe for his involvement with stolen cars,
- [c] Mr. Beauchamp contacted DSS Rae about Dennis Tunncliffe after the visit by Detective Parker on 29 August 2013, rather than after the visit by Detective Kerr on 17 October 2012.

[95] There is clear evidence however from Mr. Beauchamp *himself* during his DVD interview:

- [a] That Detective Kerr picked out Dennis Tunncliffe's name in his record book right away,
- [b] That he does not dispute that at the time of Detective Kerr's visit Dennis Tunncliffe and Sharn Noble had recently been locked up for unlawfully taking motor vehicles and had named Beachys as a place to take their stolen cars,
- [c] That it was after Detective Kerr's visit that Mr. Beauchamp told Dennis Tunncliffe "*I don't want to deal with you anymore. The Police have been around and they told me that you have been involved with you know, (pause) I do not know if stolen cars or what, but she said he was a person of interest (sic)*",
- [d] That he thinks Detective Kerr told him Dennis Tunncliffe had been in prison for taking cars and this was the reason he told Tunncliffe not to bring cars to him anymore, and
- [e] That the phone call to DSS Rae was after 17 October 2012, i.e. after Detective Kerr's visit.

[96] It is clear that Mr. Beauchamp had been purchasing cars from Dennis Tunncliffe prior to the visit by Detective Kerr on 17 October 2012, and not properly verifying Tunncliffe's identity. During that visit Mr. Beauchamp was specifically put on notice by Detective Kerr that Dennis Tunncliffe was a car thief who had recently been arrested for stealing cars. Mr. Beauchamp was also put on notice that Beachys was known to the Police and others as a place to bring stolen cars. He was also advised to keep proper records and that he had an obligation to keep vehicles for 14 days.

[97] The Authority is satisfied that Mr. Beauchamp contacted DSS Rae on 18 October 2012, the day after the visit by Detective Kerr and not after Detective Parker's visit, and that he did not mention Dennis Tunncliffe by name during this phone call or during any other phone call to DSS Rae.

[98] The Authority is satisfied that the entries in Mr. Beauchamp's record book dated 1 September 2012 (RR9641) and 4 September 2012 (TX2476) where the seller is

shown as *Brent Tunncliffe* were in fact transactions with Dennis Tunncliffe who has pleaded guilty to stealing these vehicles, and that Mr. Beauchamp recorded the registration plates incorrectly for both vehicles and did not verify Tunncliffe's identity.

[99] Regardless of Detective Kerr's warnings and despite the fact Dennis Tunncliffe is a convicted criminal with a prison ID card, Mr. Beauchamp continued to buy cars from him and to record inaccurate and inadequate details in his record book.

[100] Any reputable secondhand dealer when confronted by a known car thief trying to sell him a car would show him the door, or in the unlikely event they decided to proceed with any such transaction would ensure that diligent enquiries were made and that the records of the transaction were meticulous and squeaky clean.

[101] Dennis Tunncliffe has pleaded guilty to four charges in respect of stolen vehicles he sold to Mr. Beauchamp. Two of these were after Detective Kerr's visit. A Cefiro (BET608) was sold to Mr. Beauchamp on 19 March 2013 and a Bluebird (SB8990) was sold to him on 19 April 2013. Tunncliffe produced his prison ID on both occasions. Police enquiries reveal that plate number SB8990 has been incorrectly recorded as it does not relate to any registered vehicle.

[102] Dennis Tunncliffe also used his prison ID when selling a stolen car to Mr. Beauchamp on 21 April 2013. This is wrongly recorded in Mr. Beauchamp's record book as registration number CW4944. Police enquiries revealed the correct registration plates for the stolen vehicle were WC4944.

[103] Amazingly also Mr. Beauchamp admits that he believes that car thief Dennis Tunncliffe stole a Laser car from his own yard.

[104] Mr. Beauchamp's records are poor generally but the greatest concern is with the errors and inadequacies in the records in relation to stolen vehicles. These make it difficult for the Police to stop criminals disposing of stolen goods, and for the Police to recover stolen goods.

[105] Mr. Beauchamp for the most part does not record the model of the cars he purchases, just the make. He does not record the purchase price.

[106] He does not hold the vehicles intact for 14 days before dismantling them.

[107] Dennis Tunncliffe's says he has sold 10 to 12 stolen cars to Mr. Beauchamp who in reply says there were only 6 vehicles involved. In his DVD interview Mr. Beauchamp states that he is adamant that everything he bought from Dennis Tunncliffe is recorded in his record book. Curiously though Mr. Beauchamp says elsewhere in his interview that most of the cars he bought from Dennis Tunncliffe were deregistered with *no plates* or stickers and that he can't believe Tunncliffe drove them on the road.

[108] If this latter assertion by Mr. Beauchamp is correct he should be able to produce entries in his record book referring to motor vehicles without plate numbers. He has not done so. Nor do any of the copies of pages from his record book as produced by the Police and Mr. Davies reveal the purchase of any motor vehicles without registration plates. This tends to suggest of course that the de-registered vehicles sold by Dennis Tunncliffe to Mr. Beauchamp were not recorded.

Fit and Proper Person

[109] The Act leaves it to the Authority to decide whether a person is a fit and proper person to hold a certificate but provides no specific criteria to assist the Authority with this assessment.

[110] Clearly however the purpose of the Act as described in s.3 must be the primary consideration. Ultimately it will be up to the Authority in the case of a Police Complaint to decide what he or she makes of the written material submitted by the parties and whether the actions of the licence holder to some degree made it easier for criminals to dispose of stolen goods, and harder for the Police to recover stolen goods and solve property crimes.

[111] The Authority takes the view that an example of 'a fit and proper person' under the Act is someone who can be trusted to comply with his or her obligations as a secondhand dealer or pawnbroker under Part 3 of the Act, and who is aware of need to be vigilant and to use their best endeavours to ensure stolen goods do not pass through their business. On the other hand a person who actively encourages the transit of stolen property through their premises or who turns a blind eye when stolen property is offered to them is clearly not a fit and proper person, and is thereby subverting the purpose of the Act.

Decision

[112] Upon a consideration of all the evidence the Authority finds that the following matters have been established, are significant, and have persuaded the Authority that Mr. Beauchamp is clearly NOT a fit and proper person to hold a certificate under the Act.

[113] Mr. Beauchamp was acquainted with Dennis Tunnicliffe before the visit of Detective Kerr to his premises. He had purchased at least 3 motor vehicles from him before the visit. Dennis Tunnicliffe used his own name when selling vehicle WK246 to Mr. Beauchamp, and his brother's name when selling stolen vehicles RR9441 and TX9476 to him. Mr. Beauchamp recorded the incorrect registration plate numbers for these latter two vehicles, and did not record any verification of identity.

[114] During the visit of Detective Kerr on 17 October 2012 Mr. Beauchamp was specifically advised by Detective Kerr that Dennis Tunnicliffe was known to the Police as a car thief who had recently been arrested. He was also made aware that Tunnicliffe had spent time in prison.

[115] Mr. Beauchamp was also advised by Detective Kerr that he must keep proper records and verify the identity of sellers.

[116] Mr. Beauchamp made a phone call to DSS Rae on 18 October 2012, the day after Detective Kerr's visit. He did not however mention the name Dennis Tunnicliffe to DSS Rae.

[117] As a result of receiving information that a stolen vehicle had been taken to Beachys, Detective Parker made a visit there on 29 August 2013. The information proved correct and it was discovered that stolen vehicle XW6455 had been sold to Mr. Beauchamp 6 days previously. The car had already been dismantled and only

the engine remained on the premises. The engine was not labelled. Mr. Beauchamp had paid \$200.00 for the car which he said was in working condition with the key in it.

[118] When Detective Parker checked Mr. Beauchamp's record book it revealed he had purchased three more vehicles from Dennis Tunnicliffe since Detective Kerr's visit 10 months earlier. All were within the period of about a month, i.e. on 19 March 2013, 19 April 2013 and 21 April 2013. Tunnicliffe had provided his prison ID as a means of identification for all three vehicles. Detective Parker discovered that two of the vehicles had been stolen and that Mr. Beauchamp had recorded the registration plate numbers incorrectly for two of the three vehicles.

[119] Dennis Tunnicliffe has pleaded guilty to charges of Theft and Receiving in relation to four cars sold to Mr. Beauchamp. It is likely, as he has admitted, that Dennis Tunnicliffe has sold 10 – 12 stolen vehicles to Mr. Beauchamp since 2012 (there are 6 recorded in the record book) and that amongst the 10 -12 vehicles were a number of de-registered vehicles without plates and with the VIN smashed in.

[120] Dennis Tunnicliffe says that Mr. Beauchamp doesn't record details or ask questions, he just hands over cash, and everyone takes cars to Beachys.

[121] Dennis Tunnicliffe has stated that at no time was he ever told by Mr. Beauchamp not to come to his yard again.

[122] Mr. Beauchamp has not suggested any reason why Tunnicliffe would plead guilty to serious charges and yet still make serious further unfounded allegations against him and his business.

[123] There is next to nothing by way of evidence from Mr. Beauchamp's employee Ajai Prasad. Only a half page note saying essentially that Mr. Beauchamp always told him not to buy cars without ID, that everything must be entered in the book and there was a 14 day holding period. If Mr. Beauchamp was a responsible and careful secondhand dealer it might be expected that Mr Prasad would have been able to provide a lot more information to assist Mr. Beauchamp in countering the Police material.

[124] Mr. Beauchamp has admitted or stated the following:

- [a] He is adamant he recorded every purchase from Dennis Tunnicliffe in his record book.
- [b] Dennis Tunnicliffe sold a number of vehicles to him which were de-registered and without registration plates. *Yet there are no entries in his record book in respect of purchases of motor vehicles without registration plates from Dennis Tunnicliffe.*
- [c] Although he purchased a number of de-registered cars from Dennis Tunnicliffe he never checked the VIN numbers of any vehicles to confirm their details.
- [d] He believed Dennis Tunnicliffe had stolen a Laser car from him.
- [e] He doesn't usually record the model of cars he purchases, only the make. This was because he was busy.

- [f] He doesn't list the prices paid for vehicles.
- [g] He didn't keep a record of engines taken from cars or put labels on them.
- [h] In terms of the quantity of engines he dealt with it is notable that he says he would send a container of engines to Dubai every 2-3 months.
- [i] He has dismantled motor vehicles and disposed of the parts within the 14 day period.
- [j] He has incorrectly recorded vehicle registration numbers including those for stolen cars.

[125] On several issues, the written submissions on behalf of Mr. Beauchamp are at odds with his answers and admissions during the DVD interview with Detective Parker. The explanation for this would seem to be that either Mr. Beauchamp has not been completely honest with Mr. Davies, or that the DVD evidence was not carefully reviewed before the final written submissions were checked and submitted to the Authority.

[126] John Beauchamp is not facing charges of breaching provisions of the Act, but he has clearly breached a number of them. His behaviour as described in this Decision is contrary to the purpose of the Act and makes it easier for criminals to dispose of stolen goods and harder for the Police to recover stolen goods.

[127] After 45 years as a secondhand dealer much more could have been expected from Mr. Beauchamp than the way he has been conducting his business in recent years.

[128] The Authority finds that Mr. Beauchamp is not a fit and proper person to hold a certificate, and therefore a licence.

[129] Pursuant to s.29(3)(b) of the Act the Complaint by the Police is upheld and Mr. Beauchamp's licence is cancelled.

[130] The Authority acknowledges that Mr. Beauchamp has been in business for 45 years and that the cancellation of his licence will have a significant impact on his business.

[131] For this reason the Authority is prepared to allow Mr. Beauchamp a little time to get his business affairs in order.

[132] The cancellation of his licence will therefore take effect 30 days from the date of this Decision.

[133] If the District Court considers that a stay of the cancellation of the licence would be desirable to allow a hearing of any appeal before the cancellation takes effect, the cancellation may take effect at the expiry of such additional time as the Court decides.

[134] The Authority notes that under s.16(5) of the Act a licence holder commits an offence and is liable on summary conviction to a fine not exceeding \$2,000.00 if he or she fails without reasonable excuse to return a cancelled licence and every copy of it to the Authority immediately upon cancellation of the licence.

DATED at AUCKLAND this 30th day of March 2014.

S L Cole

Licensing Authority of Secondhand Dealers and Pawnbrokers