



**DEPUTY TRAFFIC COMMISSIONER FOR SCOTLAND**

**PUBLIC PASSENGER VEHICLES ACT 1981**

**HARDHILL PRIVATE HIRE LTD – PM1099127**

**GEMMA BLACK – TRANSPORT MANAGER**

**PUBLIC INQUIRY HELD AT EDINBURGH ON 28 SEPTEMBER 2017**

**DECISION OF THE DEPUTY TRAFFIC COMMISSIONER**

**DECISION:-**

**Operator**

- (1) The operator licence held by Hardhill Private Hire Ltd is curtailed from 14 vehicles to 10 vehicles with effect from 22 October 2018, I direct that this curtailment will be for a minimum of three months. No increase in authorisation will be granted without a formal variation application.***
- (2) I refuse the application for an increase in authority.***
- (3) I refuse the application to change the licence to a standard international licence.***
- (4) Hardhill is given the severest warning on repute short of revocation.***

**Transport Manager**

- (5) I give Ms Black the severest warning on her repute as a Transport Manager short of disqualification.***

**Previous Operator History**

1. Hardhill Private Hire Ltd (“Hardhill”) currently hold a standard national public service vehicle operator’s licence to operate 14 vehicles from the operating centre at Unit Five, 10 Easter Inch Road, Easter Inch Industrial Estate, Bathgate EH48 2FG. The licence was granted on 30 September 2011. The sole director of the company is Ian Whatley (d.o.b. 28.08.1966).
2. The current transport manager on the licence is Gemma Black (d.o.b. 23.08.1986). She is the stepdaughter of Mr Whatley. She was nominated to the licence on 10 June 2015.
3. An application was received on 29 July 2016 seeking to increase the overall

vehicle authority from 14 to 16 vehicles and also to upgrade from standard national to standard international licence. There have been issues with the licence from 2013 – see below.

### **Finance**

4. Hardhill have demonstrated financial standing.

### **Operator information and performance report**

5. Over a five-year period from 3 June 2012 to 2 June 2017, Hardhill had 23 roadside encounters with DVSA Vehicle Examiners for roadworthiness issues resulting in 9 roadworthiness prohibitions (39% prohibition rate compared to 18% nationally). Of those, 9 encounters were within the two-year period from 3 June 2015 to 2 June 2017 resulting in 6 roadworthiness prohibitions (67% prohibition rate compared to 17% nationally).
6. During the same five-year period Hardhill had 10 encounters with DVSA Traffic Examiners resulting in 8 drivers' hours prohibited encounters (80% prohibition rate compared to 9.0% nationally) of which 5 were for failing to use a driver card. Of those, 4 encounters were in the two-year period from 3 June 2015 to 2 June 2017 resulting in 3 drivers' hours prohibited encounters (75% prohibition rate compared with 6.4% nationally).

### **Background**

7. The Public Inquiry was based on a report that had been prepared by DVSA Traffic Examiner Beverley Stoner (the DVSA PI Report). In it TE Stoner sets out the background that led to the Public Inquiry.
8. TE Stoner had begun an investigation into Hardhill in October 2013.
9. On 15th November 2013 TE Stoner, accompanied by her colleague DVSA Senior Traffic Examiner Alexander Davidson had gone to the car park of Morrison's Supermarket on Ferry Road, Edinburgh. They had seen a Hardhill minibus and spoke to the driver, Francis Gartland. Mr Gartland had not recorded the journey because he had been told by his manager that the work was out of scope. Another Hardhill minibus, driven by Thomas Speirs, arrived at the car park shortly after. Mr Speirs had also not recorded the journey because he had been told by his manager that the work was out of scope. TE Stoner was of the opinion that the journeys fell within EC regulations and that they should have been recorded on the drivers' cards. The drivers were issued with conditional offers and prohibited from driving until they had completed appropriate rest periods.
10. On 20 November 2013, a s.99ZA letter was sent to Hardhill, requesting drivers' hours and company records for 20 July 2013 to 20 October 2013 to enable TE Stoner to carry out an analysis of drivers' hours and to check the operator's systems. The letter asked for the records to be produced no later than 29 November 2013, however, only some records were produced as Hardhill said they were under investigation by the Inland Revenue.

11. On 18 March 2014 TE Stoner emailed Hardhill requesting the raw digital data from driver cards and vehicle units for analysis. She spoke to Hardhill and asked for the data to be downloaded and sent to her. Hardhill did not do so.
12. On 2 April 2014 TE Stoner emailed Hardhill again asking for the raw digital data.
13. On 28 May 2014 TE Stoner received an email from Mr Whatley explaining that he had managed to download 3 out of the 4 digital vehicles but the other vehicle was in the Volkswagen Garage and he could not get access to it. Once he could get access he would download the data.
14. On 29 May 2014 Ms Black sent more data however it was not in the raw format and could not be analysed.
15. On 8 July 2014 TE Stoner asked for the data to be resent in raw format. In the meantime she had analysed the available data for 01 March 2014 to 30 May 2014 that showed that there appeared to be 14 drivers' hours offences committed by two drivers- exceeding daily driving, insufficient daily rest and insufficient break.
16. Hardhill did not reply to the email of 8 July 2014. TE Stoner repeated the request on 24 November 2014 - again there was no response from Hardhill. The DVSA investigation was suspended because of pressure of work.
17. The Hardhill file was reviewed and the DVSA decided to carry out a new drivers' hours investigation and on 18 December 2015 a s.99ZA letter was sent to Hardhill asking for drivers' hours records, raw data and company records for 15 June 2015 to 15 October 2015 to be produced by 4 January 2016. Hardhill did not reply so TE Stoner and STE Davidson went to Hardhill's premises on 4 January 2016. Mr Whatley said that Hardhill had never received the letter. Mr Whatley was given another copy of the letter.
18. On 8 January 2016 some digital data and PAYE records were produced. However the following were not produced:-
  - (i) analogue tachograph records,
  - (ii) records of private hires
  - (iii) running boards for the school runs including details of the drivers that were assigned to the school runs.
19. On 9 March 2016 TE Stoner spoke to the Transport Manager Ms Black who said that she would produce the missing records by the end of the following week.
20. On 22 March 2016 no information had been received so TE Stoner phoned Ms Black who said that she had been very busy as Mr Whatley was off work and drivers had called in sick. TE Stoner arranged to visit on 24 March 2016 to pick up the missing records and to audit Hardhill's systems.
21. On 24 March 2016 TE Stoner visited Hardhill's premises along with STE Davidson. Ms Black, the Transport Manager was present. TE Stoner found evidence in place for tachograph analysis with the exception of Working Time hours. Ms Black

explained that she had not long passed her Transport Manager CPC and she was still learning 'on the job'. She was using Tachomaster software analysis. TE Stoner showed Ms Black how to use a Working Time function within the software.

22. Ms Black did not produce any analogue tachograph records. Ms Black explained that this was because the analogue vehicles were used only for school contracts. Ms Black said new drivers were inducted, given basic training and an information fact sheet including a familiarisation talk on the digital tachograph vehicles. Their knowledge of the drivers' hours rules and regulations were tested. Existing drivers were given periodic in-house refresher sessions. If there were any driver's hour's infringements the driver would be given refresher training. TE Stoner was shown records of training to existing drivers but there were no records on initial induction and training. TE Stoner advised Ms Black to keep records of initial induction and training in the future.
23. Ms Black had not prepared the outstanding records for TE Stoner to uplift as she had promised. Ms Black said this was because she had been very busy and she had wanted to get guidance from TE Stoner during the visit. Ms Black confirmed that the firm had diaries in which all private hire work was recorded. TE Stoner had prepared a letter detailing the outstanding records and data and handed this to Ms Black at the meeting with a deadline of 29 March.
24. On 5 April 2016 Hardhill's diaries recording private hire work were produced to TE Stoner- the company diary – containing details of private hire work, and the tour diary – containing details of private hire tour work. The diaries were unintelligible because of (1) the use of shorthand and (2) poor handwriting.
25. On 14 April 2016 Ms Black emailed to say that she could not send files by email and she was sending them on a memory stick that day or the next.
26. On 28 April 2016 a memory stick with the files was delivered to TE Stoner.
27. By July 2016 an initial analysis of the data that had been produced showed drivers' hours offences and significant periods of driving without a card. There were still gaps in the data produced. Digital data from some of the vehicle units was missing. There was no record of private hires to compare with the digital data. Some of the drivers' card data was absent.
28. On 4 August 2016 a follow up request was sent to Hardhill after a driver, Anthony John Smith, d.o.b. 22 January 1982, was found to be carrying out a private hire from Newcastle Airport to East Kilbride on 18 July 2016. The driver was not using a digital driver tachograph card, there was no operator licence disc displayed in the vehicle and the driver did not have a PSV driver CPC.
29. On 3 October 2016 TE Stoner made arrangements to carry out a follow up interview with Hardhill.
30. On 28 October 2016 TE Stoner carried out a prearranged visit to Hardhill's premises in Bathgate. TE Stoner met with the Transport Manager Ms Black. TE Stoner asked Ms Black about Anthony John Smith and whether he was driving for

Hardhill on 18 July 2016. Ms Black did not know and the interview was cut short to allow Ms Black to find further information about Anthony Smith and the incident on 18 July 2016.

31. TE Stoner decided to obtain fresh data for the period August, September and October 2016. TE Stoner telephoned Ms Black and explained that she would, along with STE Davidson, download the vehicles and driver cards in person.
32. On 31 October 2016 TE Stoner revisited Hardhill's premises and continued the interview with Ms Black. In the interview Ms Black said that Hardhill had employed Anthony Smith to carry out an airport transfer from Newcastle Airport to East Kilbride. He had not been paid for the job. He had been allowed the use of the bus to go down to Sutherland to see his children. Mr Whatley had checked Mr Smith's licence but had not seen his driver CPC or his digital driver card. She could not explain why the vehicle had not displayed a disc. Ms Black and Mr Whatley did the transport planning. Mr Whatley was out of the country for substantial periods of time. Mr Whatley had gone away on 26 September 2016 and would not be back until March or April of 2017.
33. Ms Black mentioned that there was a spreadsheet of various hires on computer. Ms Black undertook to look at the spreadsheet to cover the new period of analysis. TE Stoner asked Ms Black to write down a list of records that TE Stoner required for the new period of analysis:-
  - (1) A list of all drivers employed by Hardhill within the last 3 months, including any temporary, part-time, agency and self-employed drivers.
  - (2) A list of all vehicles owned or operated by Hardhill in the last 3 months.
  - (3) Copy invoices for all private hire work undertaken.
  - (4) A copy of the spreadsheet of private hires.
  - (5) Running boards for all school runs and registered services
  - (6) A detailed list of all school runs being undertaken.
34. TE Stoner told Ms Black that she would follow this up with a formal letter. TE Stoner was giving Ms Black advance notice so that Ms Black could expedite matters and send the documents as soon as possible rather than wait for the formal letter. Vehicle downloads were then carried out by TE Stoner and STE Davidson.
35. On 3 November 2016 TE Stoner sent a formal letter requesting that the above documents should be produced no later than 17 November 2016. No documents were produced.
36. On 15 December 2016 TE Stoner was delivering a New Operator Seminar that Ms Black was attending. Ms Black approached TE Stoner and said that she had all the documents ready but she had not received a letter. She said that she would hand in the documents as soon as possible. No documents were handed in.
37. On 4 January 2017 TE Stoner telephoned Ms Black and was told that the outstanding documents were available. TE Stoner emailed Ms Black enclosing a copy of the request letter of 3 November 2016.

38. On 10 January 2017 the outstanding information was received by TE Stoner. It arrived too late for her to carry out an analysis before interviewing the drivers later that month.
39. On 31 January 2017 TE Stoner conducted an operator interview. Mr Whatley was present but chose that Ms Black should speak for Hardhill. Ms Black brought in time sheets with her. These showed only 3 out of 14 drivers completed time sheets for school contract journeys. TE Stoner asked for further information during the interview. This request was confirmed in a request letter of 31 January 2017 asking for the following to be produced by 6 February 2017:-

Digital data for 3 vehicles.

- (1) Driver and vehicle infringement reports for August, September and October 2016.
  - (2) Digital tachograph card data for Peter MacAulay including his contact details, digital tachograph card data for Mhairi MacAulay including her contact details, digital tachograph card data for 'John' (Mhairi's boss) including his contact details, digital tachograph card data for Ian Whatley, digital tachograph card data for Brian Kelly including his contact details, digital tachograph data Robert Hunter including his contact details, and digital tachograph data for Alan Jarvie including prints taken when his digital tachograph card was being replaced and his contact details.
  - (3) Company cards for downloading.
  - (4) Confirmation that all of the analogue tachograph cards for this period were not returned to the company.
  - (5) Examples of driving licence checks carried out during this period for all drivers including casual drivers.
40. On 8 February 2017 some of these records were produced. There were no driver infringement reports. There was no digital tachograph card data for Peter MacAulay, Mhairi MacAulay, 'John' or Alan Jarvie. No more analogue tachograph cards were produced. There was no confirmation of the position about the analogue tachograph cards. Ms Black wrote stating that she could not locate the discs for 3 jobs where an analogue tachograph was used, however TE Stoner identified that there were missing tachograph record sheets for at least 8 occasions.
41. TE Stoner went through the invoices for the private hire work and found that there were significant gaps in the invoice reference numbers. When TE Stoner compared the number of invoices with the hires listed on the weekend hire sheets, the number of invoices did not tally with the weekend hire sheets for any of the time period analysed. From the records that TE Stoner had analysed she identified at least 140 occasions that appeared to be examples of driving without a card.

The call-up letters

42. By letter dated 8 June 2017 Hardhill was called to a Public Inquiry at Edinburgh on

Thursday 13th July and Friday, 14 July 2017. The main issues of concern identified in the letter were:

- (1) that the laws relating to the driving and the operation of vehicles used under the licence were not being observed;
  - (2) that the operator was not observing rules on drivers' hours and tachographs and was not keeping proper records;
  - (3) that the nominated transport manager, Gemma Black, was not exercising continuous and effective management of the company's transport activities
43. Hardhill was advised that Ms Gemma Black, Transport Manager, would be invited to attend the Public Inquiry which would also consider her competence and repute.
44. The following drivers were also being called to the conjoined public inquiry/driver conduct hearing to consider their PCV driving entitlement:
- (1) Andrew Davie,
  - (2) Janice Thomson,
  - (3) Christopher Rabbett,
  - (4) Wesley Bradley,
  - (5) Alvin Wilson,
  - (6) Kimberley Lawrence,
  - (7) Robert Jack,
  - (8) James Evett
45. A letter dated 8 June 2017, in similar terms, was sent to Ms Gemma Black, Transport Manager.
46. The drivers were sent letters dated 12 June 2017 calling them to Driver Conduct Hearings conjoined with the Public Inquiry.

### **The conjoined Public Inquiry and Driver Conduct Hearings**

47. The conjoined Public Inquiry/Driver Conduct Hearings commenced on Thursday 13 July 2017 at Edinburgh. They continued on Friday 14 July, 13 and 14 September and 28 September 2017.
48. On 13 and 14 of July the following were present:
- Mr Ian Whatley, operator and director
  - Ms Diane Turner, solicitor
  - Ms Gemma Black, transport manager
  - Mr Alexander Davidson, DVSA senior traffic examiner
  - Ms Beverley Stoner, DVSA traffic examiner
  - Mr Aldin Wilson, driver
  - Mr James Evett, driver
  - Mr Christopher Rabbett, driver
  - Captain William Gage (accompanying Mr Wilson, Mr Evett and Mr Rabbett)
  - Mr Andrew Davie, driver
  - Mr Tom Docherty, solicitor representing Mr Davie,

Ms Kimberley Lawrence driver  
 Ms Janice Thomson, driver  
 Mr Robert Jack, driver

49. Mr Whatley, Ms Turner, Ms Black, Mr Davidson and Ms Stoner attended throughout the Public Inquiry. Mr Bradley was unable to attend the Public Inquiry in July because he was serving abroad with the Army. Mr Bradley was able to attend the Public Inquiry on 14 September 2017. Mr Wilson, Mr Evett, Mr Rabbett and Captain Gage attended the Public Inquiry on 13 and 14 July and 14 September 2017. The other drivers attended until they had given their evidence.

### **The Driver Conduct Hearings**

50. I chose to deal with the evidence by starting with the drivers and the Driver Conduct Hearings before dealing with the Public Inquiry into the operator and the transport manager.
51. None of the drivers disputed the facts that TE Stoner found from her analysis of Hardhill's records, driver cards and vehicle units for the period 1<sup>st</sup> August to 31<sup>st</sup> October 2016 (occasionally incorrectly described as "31<sup>st</sup> August to 31<sup>st</sup> August 2016"). Some of the inferences and conclusions that TE Stoner had drawn from what she had found in her investigation were disputed –for example that a particular driver had been driving without a card.
52. TE Stoner carried out a thorough and extensive analysis of the data and records that were available to her for the period 1<sup>st</sup> August to 31<sup>st</sup> October 2016. The exercise involved the analysis of a huge quantity of documents. The DVSA briefs and productions for the Driver Conduct Hearings and the Public Inquiry were a stack over two and a half feet tall.
53. The principal findings of the analysis were:-
- (1) Drivers had committed significant numbers of breaches of drivers' hours in the 3 month analysis period – 74 admitted by drivers of which 34 were driving without a card.
  - (2) There had been 140 instances when Hardhill vehicles had been driven without a card. Of these, 34 were admitted by drivers. The other 106 were not admitted by drivers and I am treating them as being unexplained instances of vehicles being driven without a card.
54. The analysis identified three categories of infringements:-
- Category 1- Infringements that could be identified from the driver cards – none of these were disputed by any of the drivers.
  - Category 2- Infringements that were identified from an analysis of the driver cards along with data from vehicle units and other records of the business that were accepted by the drivers.
  - Category 3- Infringements that were identified from an analysis of the driver cards along with data from vehicle units and other records of the business that were not accepted by the drivers.



55. In the course of the Driver Conduct Hearings I went through all of the infringements with the drivers. The problem with the Category 3 infringements – driving without a card that were not accepted by the drivers, is that it is clear from the totality of the evidence given at the Driver Conduct Hearings and at the Public Inquiry that the records of the business were hopelessly inadequate. Sheets showing which drivers were allocated to particular vehicles were inaccurate, for example, it was common for changes to be made, and for the records not to be updated. Similarly, invoices that appeared to show that jobs were allocated to particular drivers were inaccurate. There appear to be missing invoices. In summary, the records of the business that appeared to show that a particular driver had driven a particular vehicle for a particular hire could not be trusted – they may or may not be accurate. There was, and still is, no way of telling which records were, or were not accurate. All of the drivers who admitted infringements (including those who admitted driving without a card) said that they had committed these infringements because of ignorance. They all said that they did not deliberately set out to flout the rules and regulations about drivers' hours and tachographs. All of them said that they had learned their lesson and that they would not infringe the rules and regulations about drivers' hours and tachographs again.
56. With each driver I went through the DVSA brief for that driver to try and identify which infringements were accepted and which were disputed. From the drivers' evidence I came to the following conclusions about the drivers:-
- (1) If a driver did not accept an infringement it was, in general, impossible to infer from the records whether the driver was or was not telling the truth.
  - (2) There were extensive breaches of the rules about drivers' hours and tachographs – at least 40 admitted breaches during the three-month period.
  - (3) In addition to those breaches, the practice of driving without a card was widespread – it occurred on at least 140 occasions during the three-month period.
  - (4) There was extensive ignorance about drivers' hours and tachographs among the drivers.
  - (5) There was no effective control of drivers and drivers' hours by Hardhill, for example, there was no effective system of analysing data to identify breaches, nor was there any effective system of disciplining drivers who committed breaches.
57. Although the drivers admitted a significant number of instances of driving without a card, because of the unreliable state of Hardhill's records I felt that it was unfair to attempt to distinguish between the drivers. This is because I had the impression that the drivers could be divided into three categories:-
- (1) some drivers had been completely candid with the DVSA and with me about their infringements;
  - (2) other drivers, who disputed some or all instances of driving without a card, had been let down by the inadequacies of Hardhill's records when it came to demonstrating their innocence;
  - (3) there were others who, I felt, took advantage of the inadequacies of

Hardhill's records to maintain their innocence of committing instances of driving without a card when they were in fact guilty.

58. I found it impossible to decide, with any confidence, which drivers fell into which categories. Similarly, it was impossible to reach a view on whether or not drivers had committed breaches because of ignorance or because they were deliberately trying to get around the rules about drivers' hours and tachographs.
59. In these circumstances I decided that all of the drivers should be given the 'benefit of the doubt' and that they should all be dealt with by being given a warning that, given the experience they had been through with Hardhill and the Driver Conduct Hearings, they should be in no doubt that if they committed any infringements of the rules about drivers' hours and tachographs in the future they can expect to be dealt with severely.
60. Accordingly, I issue such warnings to Andrew Davie, Kimberley Lawrence, Janice Thomson, Robert Jack, Aldin Wilson, James Evett, Christopher Rabbett and Wesley Bradley.
61. The Army drivers  
Mr Wilson and the other Army drivers – Mr Evett, Mr Rabbett and Mr Bradley had no experience of using tachographs and of drivers' hours rules and regulations before they started working for Hardhill. The Army does not use tachographs and has different rules about drivers' hours. The Army drivers did not keep any adequate records of the hours that they worked and instead relied upon Hardhill to keep them right. Mr Wilson, Mr Evett, Mr Rabbett and Mr Bradley were unfortunate to have their first experience of professional civilian driving with Hardhill. Hardhill were dangerous employers for inexperienced drivers. Hardhill's poor record keeping meant that any driver caught up in a DVSA investigation into drivers' hours would not be able to get any help from Hardhill in defending themselves. I am satisfied that the Army drivers have learned a hard lesson from their involvement with Hardhill and that they will not make the same mistakes again of (1) not knowing the rules and regulations about drivers' hours and tachographs and (2) relying on an employer to keep records of the hours that they were working out with the Army. I should note that I found Captain Gage's evidence was of particular assistance to me and I am grateful for his attendance.

### **The Public Inquiry Evidence**

62. The main basis for the Public Inquiry was the extensive non-compliance by Hardhill drivers with the rules relating to drivers' hours and tachographs during the period of analysis 1<sup>st</sup> August to 31<sup>st</sup> October 2016. It is, therefore, necessary to go through the evidence from the Driver Conduct Hearings as this forms the major part of the evidence in the Public Inquiry. Where a driver has not accepted that he or she committed certain infringements I have set TE Stoner's analysis of what the consequences would have been for that driver if the driver had committed the infringement. The reason that I do this is not because I am suggesting that the driver did commit the infringement, but because it demonstrates the potential seriousness of Hardhill's poor recordkeeping – as I have already identified there is no way of knowing whether or not drivers were, in fact, committing these

infringements, and if they were, whether they did so deliberately or through ignorance.

### **Mr Aldin Wilson's evidence**

63. Mr Wilson worked full time for the Army during the week. He had driven for Hardhill at weekends.
64. Category 1 infringements from the driver card  
Mr Wilson accepted that he had committed three infringements that had been identified by TE Stoner from an analysis of his driver card data only:
- (1) 7 August 2016 EC rules - insufficient daily rest eight hours 20 minutes rest
  - (2) 6 August 2016 WTR -Working time of at most 10 hours at night exceeded by 41 minutes
  - (3) 1 October 2016 WTR working time of at most 10 hours at night exceeded by 27 minutes
65. TE Stoner had carried out an analysis of weekend hire sheets, invoices and vehicle data. The analysis is set out in the TE report. Mr Wilson had been a full-time member of the Army during the period of analysis. He had worked Monday to Friday for the Army and had driven for Hardhill at weekends. Mr Wilson accepted there could have been 4 days when he drove without a card. He denied that he had driven without a card on a further 6 days.
66. Category 2 driving without a card accepted by the driver
- (1) Saturday 13 August 2016  
Mr Wilson accepted he could have driven without a card. Mr Wilson drove RNZ1581 with his card inserted from 07:59 to 22:40 hours. He then drove without a card for one hour and five minutes. This disguised insufficient daily rest of only eight hours 13 minutes (it should have been 11 hours or possibly 9 hours if reduced daily rest). It also concealed insufficient weekly rest – he had taken at most 33 hours 21 minutes instead of 45 hours.
  - (2) Saturday 1 October 2016  
Mr Wilson accepted that he could have driven without a card.  
  
RNZ 1581 was driven without a card from 11:22 to 11:43 – Mr Wilson said that was not him. Mr Wilson inserted his card at 12:02 and drove RNZ 1581 for 4 hours 18 minutes. He then removed his card at 17:15 and drove from 17:17 for a further 1 hour 14 minutes until 18:55 without a card. The total driving time was 5 hrs 32 mins without a break concealing a failure to take a 45 minute break after 4.5 hours driving.  
  
Mr Wilson reinserted his card at 20:32 and withdrew it at 02:18 on Sunday 2 October. The vehicle was driven without a card from 02:20 until 02:59. Mr Wilson denied that this was him. The vehicle was stationary for 5 hrs 50 mins. There was a further period of driving without a card from 08:49 to 09:45. Mr Andrew Davies inserted his card at 09:58.

- (3) Friday 7 October 2016  
Mr Wilson accepted that he had have driven without a card on that occasion.

He had a hire from Stirling Train Station to Aviemore. Mr Wilson inserted his card at 16:23 and withdrew it at 21:01:56. Mr Wilson then drove without a card from 4 seconds later from 21:02 to 23:47. His driver card showed a driving time of 4 hours 13 minutes (with 16 minutes break). He had in fact been driving for 6 hours 39 minutes (with only 16 minutes break). He should have taken a 45 minute break after 4.5 hours driving.

- (4) Sunday 9 October 2016  
Mr Wilson accepted that he had driven without a card on that occasion.

Mr Wilson drove to Aviemore with his card inserted from 10:29 to 13:36. He then drove from Aviemore to Stirling from 13:42 to 17:33 without a card for a total of 3 hours 42 minutes. He had continuous driving time of 6 hours 40 minutes without any break (the vehicle was stationary at Aviemore for 6 minutes). He should have had a 45 minute break after 4.5 hours driving.

67. Category 3 driving without a card not accepted by the driver

- (1) Friday 5 and Saturday 6 August 2016  
Mr Wilson denied that he had driven without a card. Mr Wilson had driven TN07 ZYF from 11:37 to 01:02 on 6 August. The vehicle was then driven without a card later that day from 09:39 for 38 minutes. If Mr Wilson had been the driver the driving without a card would have concealed an insufficient daily rest on 6 August 2016. Further, Mr Wilson drove W4 HET on Sunday 7 August 2016 and had insufficient daily rest on 7 August (see above). If he had been driving without a card on 6 August 2016 this would have made his insufficient daily rest on the 7 August even worse.

On Saturday 1 and Sunday 2 October 2016 RNZ 1581 was driven without a card on three occasions:-

- (1) from 11:22 to 11:43  
(2) Mr Wilson drove from 20:32 on 1 October until 02:18:46 on Sunday 2 October when Mr Wilson's card was removed. There is then driving without a card from 02:20 to 02:59. If Mr Wilson had been driving this could have disguised a second insufficient break and the fact that he was going to exceed the daily driving period.  
(3) There is another period of driving without a card between 08:49 and 09:45.

**Mr James Joseph Evett's evidence**

68. Mr Evett, like Mr Wilson, had worked for the Army during the week. He worked for Hardhill at weekends.

69. Category 1 - from the driver card data

Mr Evett accepted all of the infringements on page 3:-

- (1) 10 September 2016 insufficient break – continuous driving 6 hours 49 minutes (18 mins break)
  - (2) 11 September 2016 insufficient daily rest of only 7 hours 18 minutes
  - (3) 23 September 2016 Exceeding the maximum daily driving limit of 10 hours by driving for 11 hours 36 minutes
  - (4) 23 September 2016 insufficient break – continuous driving for 9 hours and 59 minutes (29 minutes break)
  - (5) 16 October 2016 insufficient break – continuous driving for 4 hours 46 minutes with no break
  - (6) 23 September 2016 Working time of max 10 hours at night time exceeded by 2 hours 2 minutes
  - (7) 1 October 2016 Working time of max 10 hours at night time exceeded by 39 minutes
- and confirmed that so far as the last paragraph was concerned Mr Evett had not recorded the time that he was on duty with the Army and had taken an insufficient daily rest of 7 hours 30 minutes.

70. Category 2 driving without a card accepted by the driver

Mr Evett had driven without a card on 5 days:-

- (1) Saturday 3 September 2016  
Mr Evett drove without a card from 11:30 to 11:32 and 11:39 to 11:42 when Mr Evett inserted his card. Mr Evett then drove until 01:06 the next day Sunday 4 September 2015.
- (2) Sunday 4 September 2016.  
Mr Evett drove without a card for 1 minute at 01:25, then for 14 minutes from 04:00. Mr Evett then drove without a card from 10:36 to 13:09. The driving without a card concealed insufficient daily rest of 6 hours 22 minutes.
- (3) Sunday 11 September 2016  
Mr Evett recorded on his driver card that he had a break of 19 minutes in 6 hours 49 minutes of continuous driving. In fact he had driving without a card during for those 19 minutes. Mr Evett withdrew his card at 01:47 and then drove without a card from 01:48 to 02:05 when he reinserted his card and drove from 02:05 onwards.

Mr Evett had also failed to take a sufficient weekly rest on 12 September 2016.

- (4) Friday 23 September 2016  
Mr Evett drove without a card from 10:01 to 10:20. Mr Evett inserted his card at 10:27 and withdrew it at 11:22. Mr Evett then drove without a card from 11:22 to 11:50. Mr Evett re-inserted his card and drove until 22:13. This concealed exceeding the maximum daily driving limit of 10 hours by 46 minutes. Mr Evett explained that this had been a trip to Whitby. A passenger had been recently diagnosed with diabetes and needed regular stops to use the toilet and the traffic had been heavy.

71. Category 3 – driving without a card not accepted by Mr Evett

- (1) Friday 23 September 2016

Mr Evett had started driving RNZ 1581 at 10:01. RNZ 1581 had been driven without a card between 00:07 and about 05:10. That had not been Mr Evett.

- (2) Monday 3 October 2016  
Mr Evett had left his driver card in PO11 LNA on Sunday 2 October 2016. His driver card had been withdrawn at 06:30. He was working for the Army the next day Monday 3 October 2016. That day TN07 ZYF was driven by someone using Mr Evett's card on in TN07 ZYF from 16:33 until 20:49.

### **Mr Christopher Rabbett's evidence**

72. Mr Rabbett had worked for the Army during the week. He had worked for Hardhill at weekends.
73. Category 1- from the driver card  
Mr Rabbett accepted that he had committed the infringements on page 3:-
- (1) 3 September 2016 insufficient break – continuous driving for 4 hours and 52 minutes
  - (2) 30 September 2016 insufficient break – continuous driving for 4 hours 37 minutes
  - (3) 30 September 2016 working time of max 10 hours at night exceeded by 2 hours 7 minutes.
74. Category 3 – driving without a card not accepted by the driver.
- (1) Friday 5 August 2016  
W8 HET was driven without a card from 18:06 to 20:40. Mr Rabbett then inserted his driver card and drove from 20:50 until 01:50. Mr Rabbett said that he had not driven without a card. If he had, and he had worked for the Army from 08:00 and then Hardhill from 11:00, he would have only observed a daily rest of 6 hours 10 minutes and, when driving finished at 01:50 he would have been working for a total of 17 hours 50 minutes.
  - (2) 20 August 2016  
TN07 XYF was driven without a card from 09:33 to 11:12. Mr Rabbett inserted his card at 11:12 and drove until 21:26 and 20 seconds when his card was removed. TN07 XVF was driven without a card virtually immediately from 21:26 until 01:35. Mr Rabbett said that he had not driven without a card. If he had he would have only observed a daily rest of 7 hours 58 minutes and he would have been on duty for 16 hours 2 minutes.
  - (3) 26 August 2016  
PO11 LNA was driven without a card 00:04 to 02:39. Mr Rabbett was listed on the hire invoice for that vehicle. Mr Rabbett said that he had not driven without a card. If he had he would have observed a daily rest of only 5 hours 21 minutes and he would have been on duty for 18 hours 39 minutes.
  - (4) 27 August 2016  
PO11 LNA was driven without a card from 09:44 for 12 minutes, at 10:19 for 1 minute. Mr Rabbett's card was inserted at 10:22 and he drove until

23:56. There was driving without a card from 00:07 until 01:30. Mr Rabbett denied driving without a card. If he had driven without a card he would have observed a daily rest of 8 hours 14 minutes.

(5) Friday 23 September 2016

The weekend hire sheet showed Mr Rabbett was assigned to carry out two hires however there was no driving recorded on Mr Rabbett's card. Mr Rabbett said that he was not driving that weekend. If he had been he would have observed insufficient daily rest.

(6) Saturday 24 September 2016

The weekend hire sheet showed Mr Rabbett was assigned to carry out two private hires however there is no driving recorded on Mr Rabbett's card. Mr Rabbett said that he was not driving that weekend. If he had been driving he would have committed a weekly rest offence.

(7) Saturday 1 October 2016

Mr Rabbett had driven from 13:34 on Friday 30 September until 02:46 and 6 seconds on 1 October. PO11 LNA was then driven without a card from 02:46 until 03:34 and from 08:05 to 08:29. Mr Rabbett said that this was not him. If he had been driving without a card he would have taken insufficient daily rest and he would have failed to take a sufficient break after 4.5 hours driving.

(8) Saturday 15 October 2016

Mr Rabbett drove SN09 MMV until 02:48. His card was withdrawn and the vehicle was driven without a card from 02:48 until 03:17. Mr Rabbett said this was not him. If it had been him he would have had not taken a sufficient break after 4.5 hours driving

### **Mr Wesley Scott Bradley's evidence**

75. Like the other Army drivers, Mr Bradley worked for the Army during the week. He worked for Hardhill at weekends.

76. Category 1 - From the driver card data

Mr Bradley accepted that the infringements set out on page 3 – twelve EC drivers hours infringements including insufficient daily rest (at worst 4 hours 54 minutes), and insufficient break (at worst 6 hours 14 minutes continuous driving) and 6 WTR infringements.

From the analysis of the driver card data, vehicle unit data and Hardhill's records Mr Bradley accepted a further ten EC driver infringements – on 13 August 2016 a weekly rest offence, on 19 August 2016 insufficient daily rest, on 25 August 2016 insufficient weekly rest, on 4 September 2016 insufficient weekly rest, 10 September 2016 failing to keep an analogue record, 18 September 2016 insufficient weekly rest, 24 September 2016 insufficient daily rest and insufficient weekly rest, 30 September 2016 insufficient daily rest and 1 October 2016 insufficient weekly rest.

77. Category 3 – driving without a card not accepted by the driver

(1) 6 August 2016

Mr Bradley's card had been withdrawn from W3 HET at 00:22. The vehicle was driven without a card from 03:18 to 03:33, from 05:25 to

- 06:40, from 06:59 to 08:44, from 08:58 to 10:36 and from 14:40 to 16:58. Mr Bradley denied that it was him.
- (2) 27 August 2016  
SN09 MOF Mr Bradley withdrew his card at 15:54:52. The vehicle was then driven without a card from 15:55 to 16:21, and again from 19:57 to 20:20. Mr Bradley denied that it was him. If it had been him it would have worsened a failure to take a sufficient break.
- (3) 10 September 2016  
W7 HET was driven by Ian Whatley and then driven without a card from 17:17 to 21:14 for a total of 2 hours 7 minutes. Mr Bradley then inserted his card at 21:18. Mr Bradley denied he had driven before then without a card. If it had been him he would have had insufficient daily rest and insufficient weekly rest.
- (4) 17 September 2016  
TN07 ZYF was driven without a card from 07:25 to 11:26. Mr Bradley inserted his card at 11:29. Mr Bradley denied that he had been driving earlier without a card. If it had been him he would have had insufficient daily rest and insufficient weekly rest.
- (5) 2 October 2016  
TN07 ZYF was driven without a card from 09:24 to 11:51. Mr Bradley denied that it was him. If it had been him he would have had insufficient daily rest.

### **Mr Andrew James Davie's evidence**

78. Mr Davie had been employed by Hardhill as a full time driver from 9 September 2016. He had not been kept on at the end of his probationary period in March 2017.
79. Category 1 from the Driver's card  
Mr Davie accepted the infringements set out on page 3 – 6 failures to take sufficient daily rest, 2 failures to take sufficient weekly rest, 3 failures to take sufficient break, exceeding the daily driving limit and working excessive hours at night
80. Category 2 driving without a card accepted by the driver
- (1) Saturday 10 September 2016  
YT57 XSL Mr Davie accepted that he had driven without insufficient daily rest the previous day and that he had driven without a card at various times between 07:55 until 19:36. Mr Davie explained that he had carried out a hire from Winchburgh to Celtic Park. Mr Davie had been instructed to drive without a card by Ian Whatley. Mr Davie had been going to the game at Celtic Park anyway and he thought he was just helping out. Mr Davie had been very new to using digital tachographs. He had accepted, incorrectly, that Mr Whatley knew better than him and had followed the instruction not to record the hire.
- (2) Thursday 15 September 2016  
W7 HET Mr Davie had been driving an Edinburgh tour when the tachograph displayed an alert saying that Mr Davie needed to take a weekly rest. Mr Davie phoned Mr Whatley and asked him what he should do as he was in the middle of Edinburgh city. Mr Whatley said Mr Davie should take his card out for a 24 hour period and then 'take a printout'.



- (3) 24 September 2016  
Mr Davie had been on the weekend hire sheet to carry out 3 hires. He had carried out 2. They had been on analogue buses. He was not sure how to use the analogue tachographs and had written on the discs. He had not manually recorded the hires on his driver card.
- (4) Sunday 25 September 2016  
Mr Davie had not driven PO11 LNA without a card from 07:22 to 09:18. He had driven it with his card from 09:18 until 14:02. He had then driven without a card from 14:14 until 15:41. He had driven without a card because he was under the impression that he was going to run out of driver time for doing a journey down to Whitby and back to Grangemouth.

81. Category 3- driving without a card not accepted by the driver

3 October 2016

Driving without a card from 09:26 to 10:19 and from 21:40 to 22:34.

Mr Davie said that he had not driven without a card. If he had this would have shown that he had exceeded the maximum daily driving limit of 10 hours by 14 minutes.

82. Mr Davie had not had any training in drivers' hours from Hardhill. He had his driver card downloaded. The infringements had been picked up and discussed with the transport manager Gemma Black. She had gone into details about where he was going wrong and how to improve. She did not discuss the driving without a card with Mr Davie. Mr Whatley had suggested to Mr Davie that he should use other drivers' cards if he ran out of time – Mr Davie had refused as he had known that was wrong. Mr Davie had obeyed Mr Whatley's instructions to drive without a card because he had felt intimidated, he was new to the job and to driving with tachographs as he had been a bus driver before doing service runs. He had stopped working for Hardhill in March 2017. Mr Davie had not had any problems with drivers' hours since he stopped working for Hardhill and he produced a reference from his current employer.
83. Mr Davie was cross examined by Ms Turner on behalf of Hardhill. Ms Turner suggested that Mr Davie had been given an induction when he started by Ms Black – she had checked his licence and handed over various documents about drivers' hours and Health and Safety. Mr Davie said that he had been given paperwork after the DVSA interview in January 2017. He agreed that there was a manual kept in reception. He denied that he had just disregarded the drivers' hours rules. Mr Davie denied that he had taken a bus home when he had not been authorised to do so. Hardhill had not kept him on after his probationary period. He denied that this was because he was not meeting Hardhill's standards. He said that he had not been given any explanation why his employment had been terminated at the end of his probationary period.

**Ms Kimberley Anne Lawrence's evidence**

84. Ms Lawrence was employed by Hardhill as a minibus driver. She carried out school runs and private hire work. She carried out hires for Hardhill between 11 August 2016 and 15 August 2016 however these did not appear in Hardhill's records. Ms Lawrence did not know why all of her driving was not recorded on

the Hardhill books.

85. Category 1 - From the driver card data

Ms Lawrence accepted the infringements identified on page 3:-

- (1) 4 September 2016  
Insufficient daily rest of 8 hours 5 minutes (should have been 9 hours)
- (2) 30 September 2016  
Insufficient break continuous driving time 5 hours 41 minutes (36 minute break).  
Ms Lawrence explained that she had stopped to take a break, however, she had been moved on by a police officer after 36 minutes so she had driven back to her base at Bathgate.
- (3) 1 October 2016  
Working time exceeding maximum of 10 hours at night by 41 minutes.  
Ms Lawrence explained that she had gone over because she was driving her vehicle home.

86. Category 2 – driving without a card accepted by the driver

- (1) 7 August 2016  
Ms Lawrence had started driving W6 HET at about 11.15. She said that she had not been driving earlier (there had been driving without a card at about 01:00 and between 09:30 and 10:30). She accepted that she drove without a card for about 10 minutes at the end of her shift – she explained that this was her taking the vehicle to be refuelled. When it was suggested to her that the data showed that there was no stop and this was inconsistent with refuelling she said that she must have taken her card out to drive back to base. If Ms Lawrence had carried out the earlier driving there would have been a break offence.
- (2) 28 August 2016  
TN07 ZYF had been driven without a card 13:25 to 17:58 (incorrectly stated as 17:38). Ms Lawrence said that this was her driving friends to play football and so would have been out of scope. Ms Lawrence's card was inserted 20 seconds after that driving stopped. Ms Lawrence explained that she had used the vehicle to take friends to play football. She wasn't sure why she had inserted her card as it would all have been out of scope.
- (3) 5 September 2016  
Ms Lawrence was driving TN07 ZYF until 17:29. The vehicle was driven without a card from 17:33 to 22:33 for a total of 1 hour 27 minutes. Ms Lawrence explained that she had borrowed the bus with Ms Black's permission to pick up two friends and their luggage.
- (4) 30 September 2016  
YT57 XSL was driven without a card for 48 minutes from 13 seconds after Ms Lawrence's card was withdrawn at 11:42:47, and again from 18:32 for a further total time of 1 hour 18 minutes. Ms Lawrence accepted that she had driven back to the yard without her card in because she had been moved on by a police officer when she was trying to take a break. She had not driven in the evening. She had handed over the bus to another driver, but she could not say who the other driver was.
- (5) 2 October 2016

W7 HET Ms Lawrence accepted that she had driven without a card from 01:54 to 02:22. She had driven the bus home and had not known that she needed to record the journey. She had failed to take a sufficient break as she had driven for 5 hours 17 minutes without a break.

87. Category 3 -driving without a card not accepted by the driver

(6) 6 August 2016

Ms Lawrence drove W6 HET from 07:00 to 11:00. The bus was then driven without a card from about 16.30 to about 18.15 and at around 23:00.

Ms Lawrence denied that this was her. She had been driving earlier but she had returned the vehicle to the yard. If she had been driving she would have taken insufficient daily rest.

(7) 7 August 2016

W6 HET had been driven had been driven without a card at about 01:00 and between 09:30 and 10:30. Ms Lawrence denied it was her.

(8) 10 August 2016

Ms Lawrence had driven W7 HET from about 06:00. There was driving without a card from just after 17:00

Ms Lawrence explained that this was not her as she had dropped the vehicle back at the yard for another driver. She could not remember which driver had taken over from her. If she had been the driver she would have failed to take a sufficient break.

(9) 15 August 2016

Ms Lawrence drove W5 HET for 9 hours and 15 minutes. The vehicle unit showed driving without a card just before Ms Lawrence's card was inserted. Ms Lawrence denied driving without a card for 55 minutes. If she had she would have exceeded her daily driving limit.

(10) 18 August 2016

Ms Lawrence drove W3 HET that day. Ms Lawrence denied driving without a card for a total of 1 hour 48 minutes.

(11) 6 September 2016

TN07 ZYF was driven without a card for a total of 6 hours 34 minutes (there is a typo "07.09.2016" should be "06.09.16"). The driving without a card continued into the next day. Ms Lawrence denied that it was her. Ms Lawrence explained that she had flown on holiday on 6 September 2016.

(12) 7 September 2016

TN07 ZYF was driven without a card from 05:04 to 17:45 for a total of 5 hours 55 minutes. Ms Lawrence explained she was abroad.

(13) 8 September 2016

TN07 ZYF was driven without a card from 04:59 to 17:51 for a total of 6 hours 35 without a card. Ms Lawrence explained that she was abroad.

(14) 9 September 2016

TN07 ZYF was driven without a card from 06:36 to 17:23 for a total of 1 hour 57 minutes. Ms Lawrence explained that she was abroad.

(15) 20 September 2016

W7 HET was driven without a card during the time that Ms Lawrence had manually recorded a rest. Ms Lawrence denied that it was her. If it had

- been she would have committed a rest offence.
- (16) 27 September 2016  
W7 HET was driven without a card for 44 minutes ending 3 minutes before Ms Lawrence put in her card at about 06:46. Ms Lawrence denied that it was her. If it had been her there would have been insufficient break.

### **Ms Janice Helen Thomson's evidence**

88. Ms Thomson was a part-time driver for Hardhill.
89. Category 1 -From the driver card  
Ms Thomson accepted the infringements on page 3 of the Brief
- (1) 18 September 2016 insufficient daily rest of 7 hours 41 minutes
- (2) 3 September 2016 WTR exceeded permissible working time without a break by 3 hours 6 minutes.
90. Category 2 driving without a card accepted by the driver
- (1) Ms Thomson accepted that she had driven SW57 FUY between 5 and 21 August 2016 committing 8 infringements as set out on page 3 because she had thought that the vehicle was out with the rules. SW57 FUY had been certified as a twelve seater but Hardhill had removed seats to reduce it to an eight seater. She had not driven the vehicle on 22 August 2016 as that was the day she sat her PCV test so she had not breached her weekly rest.
- (2) 27 August 2016  
W7 HET was driven without a driver card for 6 hours 41 minutes without a break. Ms Thomson thought she might have put her driver card in the wrong slot but when the data was examined by TE Stoner at the Public Inquiry it showed that there was no card in either of the two slots in the tachograph.
- (3) 8 October 2016  
GX53 LKG Ms Thomson accepted that she had been driving an analogue vehicle and she had failed to return the paper card to the office. She had not been asked for it by the office.
91. Category 3 driving without a card not accepted by the driver
- (4) 9 September 2016  
SN09 MMV was driven without a driver card. Ms Thomson explained that she was not driving as she was at the hospital that day for the birth of her grandson.
- (5) 10 September 2016  
SN09 MMV was driven without a driver card after 22:54 Ms Thomson said that she had handed the vehicle over to another driver.

### **Mr Robert Jack's evidence**

92. Mr Jack was a part-time driver with Hardhill. His main occupation was as a carer for his wife.

93. Category 1 -From the driver card  
Mr Jack accepted the infringements set out on page 3 of the Brief – 7 infringements including insufficient daily rest, and insufficient breaks. He also accepted 4 breaches of WTR exceeding working 10 hours at night.
94. Category 2 driving without a card accepted by the driver
- (1) 7 October 2016  
SN09 MMV was driven without a card. Mr Jack explained that from 12:43 to 14:15 he had driven without a card because he thought that once his shift was finished he could take his card out. He denied driving without a card from 19:24 to 13:31 the next day.
  - (2) 23 October 2016  
SN09 MMV was driven without a card from 10:54 to 17:49 Mr Jack accepted that this was him. He explained that this was a trip to see a football match at Hampden with friends and was not for hire.
95. Category 3 driving without a card not accepted by the driver
- (1) 23 September 2016  
SN09 MMV was driven without a card from 06:35 to 01:35 the next day. Mr Jack denied that it was him.
  - (2) 24 September 2016  
SN09 MMV was driven without a card. Mr Jack denied driving for hire without a card.
  - (3) 1 October 2016  
SN09 MMV was driven without a card from 05:12 to 20:46. Mr Jack inserted his card 3 seconds after the driving without a card stopped. Mr Jack said that he had not driven without a card. The bus had arrived and he had jumped in and put his card in within the 3 seconds. Alternatively he suggested that it could have been the driving without a card could have been personal use.

## **The other evidence for the Public Inquiry**

### **DVSA evidence**

#### **PI Report**

96. The Public Inquiry Report (DVSA PI Report) prepared by TE Stoner includes extensive productions. The raw digital vehicle and driver card files were available on DVSA laptops and could be accessed during the Public Inquiry.
97. The DVSA Report included transcripts of interviews with some of the drivers that were called to Driver Conduct Hearings. The DVSA PI Report also included transcripts of interviews with drivers that were not called e.g. Jane Peden, David Williams and Arthur McKay. Similarly the DVSA PI Report includes analysis of company records, digital vehicle and driver card data for drivers who were not called e.g. Robert Hunter, Robert Campbell, Arthur Mackay, Jane Peden, Gemma Black, William Bookless, Brian Kelly, Robert Campbell, Ian Whatley, Mhairi Macaulay and Peter McCauley. The DVSA PI Report was treated as TE Stoner's

evidence in chief. In summary TE Stoner's evidence was not challenged except for some cases where she had drawn inferences from, or made conclusions, from the evidence that she had obtained. I have dealt with these challenges where they arose, e.g. in the drivers' evidence above.

### **TM Report**

98. TE Stoner prepared a report relating to Ms Black as Transport Manager. It is an abbreviated version of the DVSA PI Report and it also deals with Ms Black as Transport Manager. Ms Black had seen the DVSA PI Report as well as the DVSA TM Report. Again the DVSA TM report was treated as TE Stoner's evidence in chief.

### **The evidence for the Transport Manager and the Operator**

#### **Ms Gemma Black's evidence**

99. Ms Black gave evidence. She was aged 31. Her mother was married to Mr Whatley. Ms Black had started with the company when she left university. She got a minibus licence in June 2010 and then her PCV licence in 2011. She passed a Transport Manager CPC course in April 2015.
100. Ms Black started as the Transport Manager for Hardhill in April 2015. Before that she had taken on some of a transport manager's roles. The previous Transport Manager had been James Hilson. Mr Hilson had been with Hardhill as a part time Transport Manager for just under a year. There had been a period of grace of just under 9 months after Mr Hilson had left before Ms Black was accepted as the Transport Manager for Hardhill.
101. When she was a driver, driver cards had been downloaded once a month. Since she had become TM she had pushed for driver downloads to be weekly. She asked drivers who were available on a Monday to download on Mondays. If drivers were not in there was a machine in reception so drivers could download over the weekend as well.
102. Drivers' licence checks had been every 6 months. Ms Black had changed this to quarterly checks.
103. In April 2015 when she was appointed as Transport Manager, Mr Whatley had been acting as Transport Manager for just under 9 months. He had been dealing with planning, hiring and day to day running. The job sheets were created by the administrator, Emma Whatley, Mr Whatley's daughter. Ms Whatley dealt with bookings and created jobs sheets. Ms Black and Mr Whatley did the planning and some driving. Ms Black also did payroll and dealt with accounts.
104. She had been aware of the events in November 2013 when 2 Hardhill minibuses had been stopped by DVSA Traffic Examiners. She did not recall s.99ZA request for records.
105. She had been involved in trying to provide data to DVSA in March to May 2014.

Everything was on computers that had been taken by HMRC. Ms Black had sent data on 29 May 2014.

106. 18 December 2015 there was a new DVSA investigation. Ms Black was the Transport Manager. She had helped in providing data e.g. on 8 January 2016. On the 9 March 2016 she had spoken to TE Stoner about providing missing records. She had been telephoned by TE Stoner on 22 March 2016. She had not had the time to sit down and find the records in particular the missing analogue records. Ms Black explained that the analogue tachograph vehicles were used primarily for school contracts. Hardhill tried to avoid using them for work that required a tachograph.
107. By March 2016 she had given the school run drivers and escorts training. She had not given the Army drivers any training. She was aware that Mr Bradley, Mr Wilson and Mr Evett had their drivers' CPC. Mr Whatley had hired the Army drivers and then she met them. She checked their licences but she did not take photocopies. She had not had any discussion with them about drivers' hours as she presumed that was not necessary because they had just got their CPCs.
108. She accepted there were gaps in the data and that there was driving without a card. Ms Black said that some of it was because of drivers using vehicles for personal use or for charity.
109. Anthony Smith, an Army driver had been sourced by Mr Whatley. He had driven without having his driver CPC or a digital driver card. Ms Black said that he had not been paid for the two occasions that he had driven. He had done them as a 'favour' and he had been allowed to use a bus to travel down to Sunderland to see family. On 28 October 2016 the vehicle had not displayed a valid operator licence. The disc had been in the glove box for the vehicle. She did not know why it had not been displayed.
110. Ms Black gave evidence about the maintenance issues identified in pages 44-48 of the DVSA Report. Ms Black explained that Hardhill used a nil defect reporting system and that there were proper systems in place for dealing with defects. In the past drivers had been allowed to take buses home. She was aware that other companies allowed this. This had changed -all vehicles go back to the operating centre at night unless they were being used overnight or are on tour.
111. So far as the drivers' evidence in the Driver Conduct Hearings was concerned she did not disagree with it except for two areas:-
  1. Downloading drivers' cards  
Some of the drivers said in the interviews with TE Stoner [DVSA Report] that they did not download their driver cards because they were not asked to do so. This was lies. Hardhill's Driver Manual instructed them to download, she had asked them to download, she had text messaged them as well. Emma Whatley had also asked drivers to download. Her position was that she did ask drivers to download their driver cards and that she text messaged and emailed them to remind them. Ms Whatley did this as well. She pushed for this to be done weekly.

Over the last few months she has put signs up above the vehicle keys to remind drivers to download their cards. The current position was that most drivers were downloading weekly. Ms Lawrence and some drivers have been shown how to download vehicle units as well to cover when Ms Black was on holiday. Ms Lawrence was being trained to use the Tachomaster software to cover for Ms Black when she was off. The usual system was to send a group text reminder.

The drivers had a responsibility to download their cards at least every 28 days. It was as much their responsibility as it was her responsibility. She understood that in part she had not been on the ball but she had made changes.

2. Mr Andrew Davie

When he had started Ms Black thought that she was on annual leave – from 16 to 19 September 2016. She came back from annual leave, she saw there were infringements and she sat down with him and went through them with him. She showed him how to work the digital tachograph. The other drivers had helped him as well when he asked for help.

She accepted that she may have been wrong about when Mr Davie started as he had said that it was on the 9 September 2016. She did not recall seeing him until she came back from leave when she thought that Mr Whatley had introduced Mr Davie to her and she had downloaded his card.

Ms Black was asked about Mr Davie's allegation that on 15 September 2016 he had been instructed by Mr Whatley not to use his driver card. She did not have any knowledge of this. During that period her mother had been unwell and Ms Black and Mr Whatley had been taking it in turns to take her to hospital.

Mr Davie had said that she had not discussed his driving without a card on 25 September 2016. Ms Black said that she had discussed it with him. Since October/November 2016 Hardhill had implemented a disciplinary procedure that had been in place before but had not been used because she had not wanted to damage her relationship with the drivers.

112. Returning to the drivers' hours issues, she had not picked up that there were serious issues with driving without a card earlier because when she started as Transport Manager in May 2015 Hardhill was using a different tachograph analysis system [Tacodisc]. It was a poor system. She had needed training. She had not been 100% familiar with all of the reports that the system could provide. They had changed to Tachomaster in the summer of 2015. She now understood the system and it was possible to get reports that would identify driving without a card.
113. The period of analysis by DVSA was 1<sup>st</sup> August to 31<sup>st</sup> October 2016. Ms Black accepted that there had been driving without a card on approximately 140 occasions. Ms Black said that some of this was due to school contracts. They had not recorded school runs with tachographs but they had started to record from the latter end of 2016.
114. Ms Black explained that the school runs were between 7 and 9.30 and between



- 14.00 and 17.00. On occasions there would be an escort who would be dropped off after 17:00
115. Ms Black accepted that she had failed to identify drivers' hours infringements and to follow a structured disciplinary process to deal with infringements.
  116. Ms Black explained that what was going wrong was drivers should have stopped driving and advised her when they were running out of hours but they had not done so.
  117. When she took over she had not been shown what to do. There were no real systems in place. She had received additional support from a friend of Mr Whatley who had experience as a transport manager -Mr McEwan, over the last 9 months. During August to October 2016 there had been the bones of a system in place. She had only been in the job for a year. She had been trying to deal with her mother's illness and work. She had help from Paul Robertson, a DVSA Vehicle Examiner, in April 2015 to sort out the maintenance issues.
  118. Ms Black said that the summer of 2016 had had been worse for infringements than before. Her mother had been diagnosed with a serious illness in July 2016 and underwent treatment in August and September. Ms Black had been on annual leave from 21 to 25 August, 16 to 19 September and 29 September to 6 October 2016.
  119. She had received further training on Tachomaster in November 2016. She accepted that there had been problems with drivers' hours and tachographs but she did try to deal with them. She got some brief training on Tachomaster in the summer of 2015 when they had switched from Tacodisc. She had got some HR training and Health and Safety training as well.
  120. Ms Black explained that she had implemented changes. Drivers' downloads are done weekly and vehicles are downloaded weekly as well. New drivers have their licences and CPC checked. Drivers' working time books are handed in weekly. Ms Lawrence has been trained up. Licence checks are carried out on a quarterly basis. Any casual or agency workers have an agreement that they will download their driver card when they walk in the door to start a job. Drivers that work part-time have to declare that they have not done any other work.
  121. She could be sure that there was no driving without a card because Ms Black had implemented a system that no vehicle would leave the yard without a driver card in it. The only exceptions were if the vehicle was going to the workshop or work bay. There was analysis of driver cards and vehicle data and drivers would be disciplined if they were found to have driven without a card.
  122. Diaries, work schedules and invoices are now kept up to date. She explained that invoicing could be done ahead of the job so that there might be changes when the job was carried out. She made sure that she kept up with amending invoices on a Monday. Schedules were updated to make sure that they reflected what the drivers actually did.

123. Ms Black was a lot stricter with the two analogue tachograph buses. If a driver said that they had lost a tachograph record the driver would get a warning.
124. She denied that from April 2015 to January 2017 she had not known what the responsibilities and role of a Transport Manager were. She had worked hard to get her qualification. The 9 day training that she had got before she qualified was not enough. She felt she had needed more training. She had not been told how to get the information that she needed to fulfil the role of Transport Manager. She said that the VOSA [sic] seminars told you what to do but no one showed you what you needed to do. She had not got further training as possible training had clashed with annual leave. She said "Possibly I should have asked for more training".
125. Ms Black was asked to look at the Summary of Findings in the DVSA TM Report. She did not disagree with anything on page 35. Both Ms Black and Mr Whatley were responsible for the day to day running of the business. Mr Whatley usually spent winter in Spain from October until spring. In his absence Ms Black was responsible for running the business but Mr Whatley remained in contact. Mr Whatley was responsible for hiring drivers. Ms Black was responsible for downloading vehicle units and drivers' cards and for analysing data. Ms Black was responsible for invoicing. Private hire work was received by telephone and Facebook. Bookings were taken by Mr Whatley, Ms Black and Ms Emma Whatley.
126. Hardhill serviced 11 school contracts. 15 drivers were employed to carry out the school contracts. Ms Black provided drivers' records for herself, Arthur Mackay and Jane Peden. The other 12 drivers did not or refused to fill out drivers records. There were gaps in the records produced [see page 36]
127. In her report TE Stoner had understood that full-time drivers were salaried based on a 9 hour shift with a 1 hour break. Part-time drivers were paid hourly. School contract drivers were classed as part-time. Ms Black was asked about TE Stoner's comment on page 36 the second paragraph from the bottom that as drivers were paid according to the hours downloaded from their tacos it seemed illogical for drivers to take their driver cards if this was how they were paid. Ms Black said that drivers were not paid by the hour but were paid per run.
128. Ms Black was asked about the first paragraph on page 37 and who 'John' and 'Mhairi'. Ms Black said they were casual workers who were no longer employed by Hardhill. She did not have 'John's' details but Mr Whatley did. Ms Black explained that she had introduced a driver's declaration to make sure that if part-time or casual workers worked for other companies they were complying with drivers' hours legislation.
129. So far as the future was concerned she had more help and support in the office which enabled her to focus on the transport operation. She saw this as a long-term career. Hardhill was the family business. She hoped to take it over together with her sister. She had recently married. If she lost her job as Transport Manager with Hardhill she would have to sell her home. The job market was not great. If Hardhill was closed down it would affect her, her sister, the mechanic, drivers and escorts. Her wife was unwell and might not be able to work.

130. Ms Black had felt that the training that she had received had been to pass her Transport Manager CPC had not been enough to prepare her for being a Transport Manager in practice. She had inherited systems. She did not have a mentor. She struggled a little moving from driver to management. She had become much tougher and less friendly with employees. She was more confident. She felt that there were now the resources and support that she needed.
131. She had initially concentrated on maintenance and had carried out a review in September 2015. Since then she had concentrated on drivers' hours and tachographs.
132. Ms Black was cross-examined by Ms Turner acting on behalf of Hardhill. Ms Black confirmed that she felt that the training she underwent before qualifying had allowed her to pass the exam but did not help her with the role. She had experienced difficulties with day to day compliance. There was no-one there to show her what to do. She had struggled a little with the change from being a driver to being Transport Manager. Some of the drivers, especially the older drivers would go direct to Mr Whatley because they found speaking to a younger female difficult. She had managed to change the culture. She was much tougher and less friendly. She felt more confident. She felt that in the past there had not been the resources to support her e.g. practical support, but now there was. Others had taken over parts of her role which had taken some of the pressure off. She had Mr McEwen available to ask for help. She had concentrated on maintenance in the summer of 2015. The next stage had been to concentrate on drivers' hours over the last 9 or 10 months. She thought that it had been getting better.
133. I put to Ms Black TE Stoner's position that her analysis of driving without a card had excluded any instances of driving without a card for school work. Ms Black did not give any specific examples of where she said that driving without a card for school work had been included in the 140 instances in error.

### **Mr Ian Whatley's evidence**

134. Mr Whatley was the sole director of Hardhill Private Hire Limited. He explained that he had started the business with a restricted licence in 2010. The business grew and he had got a standard licence in 2011 with 2 vehicles. There had been an increase to 6 vehicles and then an increase from 6 to 10 vehicles and an increase from 10 to 14 vehicles. The original transport manager had been William Pearson. Mr Pearson dealt with the vehicles and drivers. He left because of ill health in 2013 and he was replaced by James Hilson. Mr Whatley had assumed because he had not been told otherwise by the Transport Managers that the transport side of the business was being run satisfactorily. They had invested in new premises and new vehicles – of a higher specification so they could get involved in the tourist industry. After Mr Hilson left in 2014 Ms Black was showing an interest in taking on more responsibility and so Mr Whatley had suggested that she should qualify as a Transport Manager. She passed part of the exams. There had been a 9 month period of grace for her to be appointed as the Transport Manager.
135. Mr Whatley thought that the business had expanded too quickly for the systems and processes in place. In the last year he had identified that there were things

that needed to be put in place. He had 30 staff now having started as a small family business. He had not been on the ball in the past but he had invested in staff and systems to help Ms Black. He had just spent 6 months in Spain because his wife had been unwell and needed to convalesce. Before that he would have been in Spain every year from October to December and from February to April.

136. Mr Whatley said that so far as Mr Davie's evidence was concerned Mr Whatley had been in the UK when Mr Davie had said he could not get a hold of him. Mr Whatley had never asked Mr Davie or any driver to 'pull a taco'. Mr Whatley said he had told drivers specifically not to take tachograph cards out. No other driver had said that Mr Whatley had told him or her to 'pull their taco'.
137. When he was in Spain he was still working, it was his role to drive the company forward. From October onwards he would be speaking to tour companies and networking.
138. When they had been without a Transport Manager he had been aware that there had been problems and he had contacted William McEwen, a transport manager, to get extra support and to liase with Ms Black. Unbeknown to him the systems in place were not ideal. There had been a VAT inspection and all of the laptops, paperwork etc had been removed by HMRC. Hardhill had to go and buy new equipment. HMRC did not return the removed items for 8 months. In the end Hardhill had been fined £300 by HMRC. The HRMC investigation had meant that they had not been able to produce the records that the DVSA had asked for. They had not been trying to be awkward.
139. After Ms Black had been appointed as Transport Manager he had thought because she had done the course she would be able to fulfil the role. He had not identified that there were problems. He had asked Ms Black to do other roles such as accounts. He had done this because he had thought that Ms Black had been coping. He had not been aware that there were issues until last year. He said that Ms Black was had been too reluctant to say 'I need help' because she was too proud and had not wanted to let him down. He had paid Tacomaster to put in the systems that were needed to enable Ms Black to correlate the data to identify, e.g., missing miles.
140. Ms Black had been appointed as Transport Manager when the company was going through a growth period. With hindsight he accepted that he had focussed too much on the business and clients and neglected the systems. He had not done this through ignorance but because the company had grown so quickly. He had now identified that the company had to prioritise road safety.
141. Mr Whatley thought there had been massive progress in the last year towards compliance. Ms Black now had more help. He thought that Ms Black had perhaps been too lax coming from being a driver to Transport Manager. Ms Black had now changed.
142. Mr Whatley said that Hardhill's insurance allowed drivers to use vehicles so long as they were employees of Hardhill. Mr Davie had borrowed a vehicle to use for a hockey team and he had crashed it. No-one was allowed to use vehicles now.

They had learned a lot from STE Davidson and TE Stoner. He knew things had to change. They had made mistakes not through negligence or ignorance but because the company had grown.

143. The period of August to October 2016 had been particularly difficult because of his wife's illness.
144. The Army drivers had been sourced through Christopher Rabbett who had come in looking for part-time work. At that time Hardhill had needed part-time drivers to fill in the gaps. Christopher Rabbett introduced 4 or 5 guys who were very good. They used the Army drivers from July to October/November 2016. They were a godsend. Mr Whatley said that if he and Ms Black had been on the ball they would have realised the Army drivers could not work the hours that they had done. They now checked part-time and agency staff.
145. Mr Whatley said that he saw the business remaining a small family run business in the future. He wanted another 2 discs to increase to 16 but he did not think they would get any larger than that. He wanted an international permit because he did work for a client that did a Scotland and Ireland tour and the client wanted them to take over the tour.
146. Hardhill had been his life for the last 7 years. There were 30 employees who relied on them. Hardhill had guaranteed work for the next 3 years with a local authority. Their drivers had built relationships with special needs children. These school contracts were a big thing for Hardhill.
147. Hardhill would do whatever they needed to be a compliant operator. What had been implemented in the last 9 months was adequate so far. Ms Black took great pride in what she did. So far as road safety was concerned they were dealing with issues, money would be made available. The intention was to comply with every rule. He never wanted to be back in a Public Inquiry again.
148. Mr Whatley had not been aware of all the requests for information from the DVSA. They had not been receiving some emails. He had been aware that the DVSA had been interested in the company before March 2016. It had been handled by Ms Black., He had never wondered why the DVSA were interested in his company. He did not ask his transport manager, Mr Hilson, about the DVSA investigation in 2013 and 2014.
149. Mr Whatley knew about the Anthony Smith situation. He had been aware of the DVSA request for records for August to October 2016. He had only been aware that Mr Smith did not have his CPC after the interview in October 2016.
150. He had not been aware that there had been difficulties with drivers' hours until he was told of the results of TE Stoner's analysis in January 2016. If he had been aware he would have taken steps.
151. The transport manager was responsible for compliance but Mr Whatley also took responsibility as it was his company. He had put a lot of trust in Ms Black. He had 'taken his eye off the ball a wee bit'. Ms Black had not been given the resources

she needed. He had not known that they were not compliant.

152. In the past he had thought that the transport managers had made proper arrangements to ensure compliance. It had made him think more about what was involved in running a transport business. There was 'no chance' that he would have instructed drivers to pull cards or use other driver's cards.
153. Mr Whatley thought that the systems in palace had been adequate but Ms Black had needed proper training.
154. He strongly believed that processes and staff were now in place to run a compliant operation.
155. The business could not cope with suspension of the licence. It could cope with curtailment to 10 for a few months.
156. Mr Whatley was adamant that he could prove to the DVSA that he ran a compliant business and that I did not need to worry that Hardhill might not be compliant in the future.
157. Mr Whatley's evidence in chief concluded.
158. At that point I asked TE Stoner if she had any views on whether Hardhill were running a compliant transport operation in light of Ms Black and Mr Whatley's evidence.

TE Stoner said that she had seen from the productions:-

- (1) 30 July 2017 TN07 ZYS, Jonathan Michael Horner had been driving without a card and there had been a card insertion while driving.
  - (2) 2 July 2017 Mr Mackay had been 9 minutes over his 15 hours spread over and had pulled his card.
  - (3) 22 June 2017 there was a letter to J McKee saying that he had gone 18 minutes over his time but there was no more information about why this had occurred.
  - (4) 2 July 2017 there were two incidents of driving without a card.
  - (5) 22 June 2017 another vehicle had been driven without a card – the explanation was that was shunting within the yard but the tachograph showed 26 minutes continuous driving so shunting was not possible.
- TE Stoner had identified 14 instances of driving without a card.

159. Given the hour at that point I considered it appropriate to adjourn the Public Inquiry to allow Hardhill the opportunity to consider how to respond to the infringements identified in their productions.
160. When the Public Inquiry re-convened on 28 September 2017 TE Stoner went through the operator's productions in more detail. She said that they were a step in the right direction. TE Stoner was concerned that the issues identified in her original report remained. The Tachomaster missing mileage report was still showing instances where vehicles were being driven overnight without

tachographs (so this could not be school work and appeared to be work within scope of the EU regulations). There were instances of cards being taken out before shifts finished. The missing miles information did not give her confidence that all missing miles were being captured. Drivers were still removing cards to avoid infringements.

161. I then went through the missing card reports with Ms Black. Mr Whatley also gave evidence when he felt that he was in a better position to give evidence than Ms Black about certain matters. I have page numbered Hardhill's productions in the tab marked 'MISSING CARD REPORTS' and I have set out an analysis below. Of the various instances of driving without a card some were explained – of these some were for reasons that should have been stamped out after the DVSA interview at the end of January 2017 e.g. fuelling, driving a bus home after work, running out of time because of being stuck in traffic, and some were unexplained. The two that were unexplained are of particular concern – numbers (6) and (7) below.

(1) YR63TZL

This vehicle was driven without a card on two occasions (other than a 5 minute 'shunting' on 4 July 2017) see page 1:-

07-07-2017 start 23:13 end 23:46 Drive Total 00:33  
08-07-2017 start 00:56 end 01:41 Drive Total 00:41

The first journey is 33 minutes continuous driving ending at 23:46. Just over an hour later YR63TZL is driven for 41 minutes over a 45 minute period. The second journey is a return journey. The first journey is identified as 'Andy had it for Airport Manual printouts whilst awaiting taco'.

Ms Black explained that both journeys were the same driver – Andrew Smith. He had lost his digital card and manual printouts were created.

(2) SN09MMV

This vehicle was driven on two occasions see page 2

05-07-2017 start 16:11 end 16:35 Drive Total 00:25  
06-07-2017 start 13:45 end 13:58 Drive Total 00:13

The Missing Miles Investigation Report at page 8 states:-

"On investigation of SN09 MMV this was used on school contracts without a card."

(3) SN57FUY

This vehicle was driven without a card on two occasions see page 2

07-07-2017 start 15:26 end 15:39 Drive Total 00:13

The comment on the Tachomaster missing cards report page 2 states "Gemma Black 10-07-2017 13:47 Jane Peden removed card thinking she was finished then drove home."

08-07-2017 start 19:55 end 20:06 Drive Total 00:11

The comment on the Tachomaster missing cards report page 2 states 'Gemma Black 10-07-2017 13:52 JE Wilson took without card home it wasn't on hire but will address this with her as policy states no buses to be driven without a card.'

The Missing Miles Investigation Report states, see page 14:-  
 "The two occasions highlighted for SW57FUY were in fact drivers collecting or dropping off the bus before/after their shifts and removing their cards then bringing them/leaving the yard. I will address each driver the importance of keeping their cards in until their shifts are finishing to avoid such issue arrives in the future."

Mr Whatley accepted that it was not acceptable to have drivers' driving without cards but stated that Ms Black was disciplining drivers who were not doing what they should be doing.

(4) W4HET

This was driving without a card on two occasions:-

19-06-2017 start 09:12 end 17:48 Drive Total 00:16

22-06-2017 start 12:04 end 17:06 Drive Total 00:26

Ms Black had investigated and this was fuelling and yard shunting. Ms Black said that she had told drivers that they needed to fuel the vehicles during their shift with a card in.

(5) W7HET

22-06-2017 start 06:12 end 22:09 Drive Total 00:26

Ms Black said at she had been on annual leave from 20 June to 3 July. She had investigated (see letter of 7 July 2017 page 22) and found that Joseph McKee had been driving the vehicle. He had taken his card out at 21:50 and then driven from 21:51 until 22:09 when the rest mode was selected.

She spoke to him about it and he said that he was going to run out of time as he was stuck in traffic so he took his card out and drove to the yard. He was given a verbal warning.

(6) W8HET

02-07-2017 Start 02:32 end 07:40 Drive Total 02:53

The comment on the Missing Cards printout is 'Cannot link to any work' page 12. The Missing Miles Investigation states:

"On investigation of W8 HET, there was no private hire linking this missing mileage. On Ian's return from annual leave I will need to investigate this further."

Ms Black stated that she had investigated this further but she could not recall what the outcome of the investigations was.

(7) RNZ1581

19-06-2017 Start 07:42 end 09:32 Drive Total 00:14



Ms Black could not recall what this was.

26-06-2017 Start 15:10 end 19:35 Drive Total 00:23

Ms Black said that she had tried to work out who the driver for this was but she could not recall what her conclusion was.

- (8) SF08YNM  
 Wednesday 21-06-2017 Start 14:50 end 17:03 Drive Total 01:45  
 Sunday 25-06-2017 Start 16:47 end 17:03 Drive Total 00:16  
 Sunday 02-07-2017 Start 00:38 end 15:29 Drive Total 00:17

Ms Black said that the first two were when the bus was being used for school contracts. She had investigated the 2<sup>nd</sup> July incident see letter at page 33 it appeared that Mr McKay had removed his card because he was going over his 15 hour shift. She said the driver, Mr McKay, had been issued with a warning. She was told by Mr Whatley that Mr McKay had said that he had not pulled his card because he was over his shift. Mr McKay had left his car keys at home, he had driven home, picked up his car keys and driven back.

- (9) SN09MMV  
 Tuesday 20-06-2017 Start 09:50 End 13:47 Drive Total 00:20  
 Ms Black said this had been investigated and was a school contract.

- (10) W5ET  
 28-06-2017 Start 07:42 End 16:48 Drive Total 2:24  
 Ms Black had investigated this and because it was driving on Stornoway no tachograph needed to be used.

- (11) W7HET  
 22-06-2017 Start 06:12 End 22:09 Drive Total 00:26  
 26-06-2017 Start 01:24 End 20:30 Drive Total 00:12  
 27-06-2017 Start 05:54 End 06:13 Drive Total 00:07

Ms Black had investigated these and the first one was Joe McKee continuing to drive for 18 minutes after he removed his card. She had issued him with a verbal warning. The other two were shunting in the yard.

- (12) YR63TZL  
 22-06-2017 Start 08:24 End 08:35 Drive Total 00:11  
 23-06-2017 Start 07:40 End 08:49 Drive Total 01:01  
 30-06-2017 Start 08:20 End 13:27 Drive Total 03:03  
 02-07-2017 Start 20:16 End 20:45 Drive Total 00:24

The first three were school contracts. The fourth was Mr Jack taking the vehicle home without a card in it – he was issued a warning.

Page 17 was an example of a warning issued to a driver. It had a typo in the date of the letter – 13/06/2017, she had copied and pasted an earlier letter. She could not say who the letter was given to but there would be

an original scanned on to the driver's HR file. Page 20 was a similar letter with the same typo. The signed version would be on the driver's file.

- (13) SN09MOF  
 02-06-2017 Start 21:09 End 21:39 Drive Total 00:18  
 03-06-2017 Start 06:18 End 06:35 Drive Total 00:14

Ms Black would need to check her notes on the system to say what these were however she had checked them and there would be notes.

- (14) W6HET  
 04-06-2017 Start 18:22 End 18:25 Drive Total 00:03

- (15) W7HET  
 07-06-2017 Start 07:15 End 16:36 Drive Total 03:26  
 09-06-2017 Start 07:07 End 07:51 Drive Total 00:25

Ms Black had investigated these and they were school runs.

Ms Black referred to the Tachomaster reports for the period 17-02-2017 to 28-02-2017 -pages 28 to 32, to demonstrate that she was investigating driving without a card – there were 15 instances of driving without a card. All of these were movements in the yard ('shunting').

### **Submissions by Ms Turner on behalf of Hardhill**

162. Ms Turner accepted on behalf of the operator, Hardhill, that there were difficulties with Hardhill's record keeping that made it a great challenge to work out who was driving which vehicle when. She invited me to find that some of the inferences and conclusions that had been drawn by TE Stoner did not have an evidential basis. She gave the example of page 22 of the DVSA Report where TE Stoner had identified a possible infringement on 21 August 2016 which was based on an assumption that Ms Thomson was carrying out school contract work on Monday 22 August 2016. Ms Turner asserted that Monday 21 August 2016 was during the school holidays. Ms Turner did not propose to go through every infringement as she thought that there were such a significant number that she did not dispute had occurred that if 10 or 20 of the 140 alleged were not established that would not make a critical difference to the outcome.
163. Ms Turner said that Hardhill accepted that they had not complied in the past but Hardhill was showing a real commitment to achieving the required standards. They had made progress and had a real commitment to being a successful operator – they wanted to be confident that they were compliant. They did not want to appear at a Public Inquiry again.
164. Hardhill had been the victim of success. There had been very rapid growth combined with moving premises and losing their original Transport Manager. The replacement Mr Hilson had not been a success. Hardhill decided to appoint Ms Black. She had struggled to cope with the role in practice. Mr Whatley had previously relied upon a very experienced Transport Manager and he was not

quick enough to appreciate that Ms Black needed additional support to perform the role of Transport Manager successfully.

165. The rapid growth, the loss of an experienced Transport Manager and the appointment of Ms Black, an inexperienced Transport Manager meant that the business outgrew its systems and processes. The illness of Mr Whatley's wife (Ms Black's mother) had contributed to the pressure on 2 key duty holders personally and this had affected the business.
166. Hardhill's compliance was moving forward. The company had been on a difficult journey. They have embraced the DVSA investigation and Public Inquiry as an opportunity to learn and put in place systems and processes. They had shown a real commitment to comply. They were trying to create a culture of compliance.
167. Ms Turner said that Hardhill could not change the culture overnight. Hardhill had to put systems in place and take the drivers and the rest of the team with them. They had a really strong commitment to do that. The drivers and staff were not deliberately obstructive – they wanted to comply and to see the business succeed.
168. Ms Turner invited me to consider the impact on all of the employees if Hardhill were not allowed to operate.
169. Ms Black was at the beginning of her career as a Transport Manager. She had an unfortunate and difficult start. She had not joined a large organisation with strong management where she could be nurtured and could learn as she went along.
170. Neither Ms Black nor Mr Whatley had appreciated that the Transport Managers' CPC course did not teach you to do the job in practice.
171. Hardhill had put in place practices and procedures to be a compliant operator. Mr Whatley had put in finance. They had sought help. They had hired additional staff to help Ms Black.
172. Ms Turner said that Hardhill had achieved good compliance in maintenance and were working hard at getting there for drivers' hours and tachographs. They have demonstrated that they have practices and procedures in place. They have sourced further HR support and training.
173. Mr Whatley was happy to give fresh undertakings if asked. Ms Turner asked me not to impose any sanction that would prevent him from operating his business and employing his drivers and staff. Ms Turner said that Hardhill had demonstrated huge progress so far. Ms Black's level of knowledge had increased. She should be allowed to develop her career as a Transport Manager.
174. So far as suspension or curtailment was concerned Hardhill had 13 school contracts a number were for special needs children for 3 years. If the licence was suspended or curtailed it was a term of the contracts that Hardhill could not outsource the work and so unless the suspension was during the school holidays this would cause the schools, parents and children difficulty.

175. The tour work could be subcontracted but Ms Turner submitted that forcing Hardhill to subcontract would serve any great purpose. Ms Turner invited me to give Hardhill a warning and impose undertakings on the licence.
176. Ms Turner submitted that Hardhill had not gained any significant competitive advantage. They had not derived significant financial benefit from the lack of coherent organisation. The Army drivers were not paid any less than any other part-time driver.
177. Hardhill accepted that there were two infringements when a disc was not displayed. These had been explained. This was not a case of buses without discs being used to do jobs that were not put through the books.
178. Ms Turner suggested that the lack of systems, processes and organisation had led to the cost of paying agency drivers or paying overtime that Hardhill would not have had to do if they had properly planned the jobs.
179. Having systems means that an operator complies more efficiently and effectively. A well-managed, well run business was more profitable than a disorganised business. Ms Turner invited me to find that Hardhill had not really derived a significant financial benefit.

### **Submissions by Ms Black**

180. Ms Black said that she had inherited poor practices when she took over as Transport Manager. She had never been shown how to perform the role. The training that she had received had been adequate but she had continued to learn on the job. She now had a source of advice available on the telephone (Mr McEwen). Mr Whatley had assigned more staff to help her. Ms Black no longer did accounts or bookings. She concentrated on her role of Transport Manager. Ms Black gave the example that she had spent this week planning the next year's maintenance getting all the jobs booked. Ms Black did not want to lose her job. The whole experience of the DVSA investigation and the Public Inquiry had been the kick up the backside that she needed. She hoped that one day she and her sister would take over the business.
181. Ms Black felt that she had control of the transport operation at the moment. There was room for improvement in the future. She felt that she had made drastic improvements. Even since the beginning of the Public Inquiry in July she had changed – she was getting stricter with the drivers. Ms Turner had touched upon a lot of what Ms Black had wanted to say. She had made changes. Ms Black guaranteed that there would never be infringements as high again.

### **Findings in fact**

182. Very little of the factual evidence was disputed. There were only two significant areas of dispute identified in submissions:-
  - (1) Mr Andrew Davie gave evidence that he had been instructed by Mr Whatley to 'pull his card'. No other witness gave evidence that they had been instructed by

Mr Whatley to pull their driver card. Mr Davie's evidence was strongly denied by Mr Whatley. In the circumstances I am not in a position to make a finding as to whether or not Mr Davie was instructed to pull his card by Mr Whatley.

(2) Ms Turner did suggest that some of the inferences or conclusions that TE Stoner had drawn were not based on fact. Ms Turner suggested that there might be 10 or 20 cases where TE Stoner had got her facts wrong. Ms Turner gave only one example - she disputed TE Stoner's evidence that Monday 21 August 2016 was a school day. Ms Turner did not produce any evidence that it was not a school day e.g. a list of term dates from a local authority. In any event the dispute does not matter. Ms Turner has misunderstood TE Stoner's evidence at page 22 of the DVSA Report. TE Stoner's analysis was that if Ms Thomson had carried out school contract work she would have failed to take an appropriate weekly rest. TE Stoner went on to say that:-

"As Ms Thomson never filled out any time sheets for the school contract work, I am unable to determine this."

183. TE Stoner's point was that not that Ms Thomson had breached drivers' hours but that because of Hardhill's poor record keeping it could be impossible to say whether Ms Thomson had breached drivers' hours.
184. So far as Ms Turner's suggestion that out of the 140 instances of driving without a card there might be 10 or 20 cases where TE Stoner had made an inference or conclusion Ms Turner never made this suggestion to TE Stoner in cross-examination. Ms Turner did not identify any examples other than the 21 August 2016. I have been through the evidence myself and I cannot identify any instances where I consider that TE Stoner made the error suggested by Ms Turner. In any event I agree with Ms Turner's submission that it does not matter whether or not there were 120 or 140 instances of driving without a card.
185. In the circumstances of this case it is unnecessary for me to make detailed findings in fact. I accept the factual evidence of TE Stoner set out in the documents that she prepared for the Driver Conduct Hearing and the Public Inquiry setting out the results of her analysis of the documents and data relating to Hardhill. It is, of course, my role to decide what inferences or conclusions should be drawn from those facts.

### **Consideration of the evidence**

186. Operators when they are granted a licence give a standard undertaking to make proper arrangements so that the rules on drivers' hours and tachographs are observed, that proper records kept and that these records are made available on request. Transport managers, when they are appointed to a licence, declare in the TM1 that they shall effectively and continuously manage the transport activities of the licence holder. They declare that they understand that the responsibilities of a transport manager include the making of arrangements to ensure that drivers comply with drivers' hours and tachograph rules, and the compilation of accurate records.

187. There is, or should be, no mystery about what operators and transport managers are expected to do in order to comply with the rules about drivers' hours and tachographs. The advice given by DVSA and its predecessor VOSA has not changed so far as the basics of requiring operators to put proper arrangements in place to make sure that each vehicle and driver complies with the rules.
188. Going back to two years before Hardhill's licence was granted in 2009 The Safe Operators Guide published by VOSA (Revised 2009) advised:-

“Section 2: Monitoring procedures and systems (in general)

...As an operator, it is your responsibility to put proper arrangements in place to make sure that, where relevant, each vehicle and driver complies with all of the items listed below.

We recommend that each item in the list has a related procedure for checking the standard of compliance and a system for immediately acting on any non-compliance. It is important to have a system for immediate action so that the situation can be corrected, procedures can be introduced for training, and control measures can be introduced to prevent non-compliance happening again.

You must make sure that vehicles are operated as safely as possible, There is little point in having a good monitoring system in place if faults and bad behaviours (minor or serious) are seen and acknowledged but just allowed to happen....

Record keeping - Issue, return, check/analyse, store/file tachograph charts or manual record books and or duty rosters and timetables. Download, store and analyse digital data from driver smart cards and digital tachographs...

Drivers – Check driving licence, driver smart cards, training, scheduling of duties and rotas, hours of work, record keeping and control measures around non-compliance...

The main items to be monitored include:-

*Scheduling and planning duties*

Any operator of goods and passenger carrying vehicles should have a good system in place for scheduling drivers' duties to take account of all relevant drivers' hours, working time and health and safety regulations...

*Drivers' hours and tachograph record keeping system (EC Regulations)*

It is essential for road safety reasons that you can show that your drivers are keeping to the hours and record keeping regulations. You should therefore have a good monitoring and control system in place...

*Checking and downloading of driver smart cards...* Routine checking and downloading of smart cards should be conducted, particularly for part-time and agency drivers, to confirm that the card is valid and that drivers have adequate time to complete the duties assigned to them...

*Downloading digital data from digital tachographs...* The transport manager (or delegated person) should ensure that downloading of the

data from a digital tachograph is routinely conducted...often enough to ensure that data is not lost.

This enables the operator to ensure the completeness and accuracy of data captured from driver smart cards and to take timely remedial action to resolve any problems. The tachograph will have a record of all the driving and will enable identification of all driver cards used and periods of driving without a card...

*Records of analysis of driver records-* You should keep a record of the analysis and the results for both analogue and digital tachograph records...

*Listing faults and offences (both serious and minor)* – You should list all drivers' hours and records offences relating to each driver and vehicle... that you find during the analysis.

You should have a procedure in place for quickly bringing this list to the attention of the person(s) responsible for the running of the transport business.

*Monitoring and training drivers* – In the interests of road safety, you should put a system in place to interview drivers when offences are discovered, so that you can discuss and arrange a suitable training programme and, where necessary, impose sanctions...

*Storing digital data...* for the purposes of confirming the authenticity of data, it must be stored in its downloaded format.

*Keeping and filing Working Time Directive records-* The law says that you must keep a record of the hours worked by all employees...You must be able to give employed drivers and other workers copies of the records of hours worked if you are asked."

189. The reason for the drivers' hours rules is safety – drivers who are tired are a significant risk to themselves, to passengers and other road users.
190. In order to comply with the rules an operator must have systems in place, maintain records of those systems, analyse the data produced by the systems, check that drivers comply with the drivers' hours rules and act if any non-compliance.
191. Hardhill failed in all of these requirements. Hardhill is, of course, a limited company. However, it is clear from the evidence that Mr Whatley was the sole director of Hardhill and effectively he was Hardhill. In the circumstances it is appropriate to treat Mr Whatley as the operator.

(1) Keeping proper records

In the analysis period of 1<sup>st</sup> August to 31<sup>st</sup> October 2016 there were 140 instances of vehicles being driven without a driver card when it appeared from the circumstances (e.g. time of day, distance travelled, company invoices) that a driver card should have been inserted. Because of the inadequacies of Hardhill's record keeping, if 36 of these offences had not been admitted by drivers, none of these could have been attributed to particular drivers with any great confidence. Hardhill should have had records that would have said this vehicle which was driven without a card was in fact being driven by driver X.

There appeared to be no proper system for scheduling drivers' work. The scheduling could change without records being updated. There were gaps in the analogue tachograph record sheets. There were gaps in driver card downloads because driver cards were not downloaded before drivers left Hardhill's employment. Invoices appeared to be missing.

(2) Analysing the data from the records

Mr Whatley and Ms Black knew, or ought to have known that there were significant numbers of infringements of drivers' hours and significant amounts of driving without a card in the 3 month analysis period. This was not a case where vehicle units were not being downloaded. Ms Black said that the vehicle units were being downloaded. It would have been obvious from the downloaded data that vehicles were being driven without cards on at least 140 occasions.

Ms Black claimed that drivers' cards were regularly downloaded. Downloading the driver cards would have revealed that drivers had committed at least 40 infringements. If the driver card data had been analysed along with the vehicle unit data the analysis would have revealed that there were drivers who appeared to be driving without cards in order to disguise further infringements. This should, in turn, have triggered an investigation by Hardhill into whether or not this was the case.

In her interview on 30 January 2017 Ms Black said that she had checked vehicle unit data for driving without a card during the period 1 August to 31 October 2016 (see page 29 DVSA TM Report) and that she was aware that there was driving without a card. Ms Black said that some of it had been drivers using vehicles for private use and some was school contract work or charity work.

On page 30 Ms Black said that Hardhill had not made any attempt to identify which driver was driving a vehicle without a card in order to ask the driver why they had done so.

Later in the interview at page 34 Ms Black said that she had she said that she would provide TE Stoner with a list of drivers' hours offences that she had identified during August, September and October 2016. On the 31 January 2017 Ms Black was asked in an email to produce all driver and vehicle infringements reports relating to the analysis period. No list of drivers' hours offences was ever provided by Ms Black. No driver or vehicle infringement reports for the analysis period were produced by Ms Black (although some infringement reports were provided for the period after January 2017).

I take from Ms Black's evidence that she did know that there was significant driving without a card. She did not, for whatever reason, take any action in relation to this. The only explanation that she gave was that some of the 140 instances were private use, school or charity work and therefore out of scope but that begs the question if she knew that some of the instances could be explained, why did she not do anything about the instances that could not be explained? From the evidence it appears to me that only a handful of instances



that could be private or charity use. I do not accept that any of the instances were school work.

Mr Whatley gave evidence that he did not know about the driving without a card. I have no reason to disbelieve his evidence. Mr Whatley cannot, however, abdicate his responsibility as (in effect) “the operator” for the failure of Hardhill’s systems and of Hardhill’s Transport Manager to identify and deal with the 140 instances of driving without a card.

Mr Whatley had acted as transport manager during the period of grace. He had chosen to promote Ms Black, his daughter, from being a driver and administrator to Transport Manager. He knew that she was not an experienced transport manager. It was not good enough for him to leave her to cope on her own after she was appointed as Transport Manager. It is entirely understandable that Ms Black should have been reluctant to admit that she was not coping and that she needed help. It was his responsibility to take steps to make sure that Ms Black was coping, and that if she was not coping, that she was provided with the support and assistance that she required.

### (3) Checking the drivers are keeping to the rules

Hardhill’s system for checking drivers’ licences and CPC was defective. Some drivers said that in interview that their licences had not been checked e.g. Mr Bradley, Mr Evett. Ms Black had never seen “John”’s licence and indeed she did not have his details. Ms Black had not seen Anthony Smith’s licence but said that Mr Whatley had. Mr Smith did not have his CPC.

There was no evidence that Hardhill had a proper system for keeping track of their drivers’ working hours e.g. timesheets. Hardhill did not know, and did not ask, whether the Army drivers could drive for them without breaching drivers’ hours rules and as a result Hardhill found that Army drivers drove on occasions when they breached the drivers’ hours rules because of their employment with the Army.

So far as training of drivers is concerned Ms Black’s evidence was if Hardhill took on drivers who were already qualified:-

‘Basically we’ve taken them as professional drivers they’ve went for their CPC, they’ve went for their training they should know.’ Page 21 DVSA TM Report.

That was not good enough. As part of the interview process an operator should satisfy themselves that a new driver has an adequate understanding of the drivers’ hours and tachograph rules. As part of the induction process an operator should keep an eye on new drivers and check their compliance with drivers’ hours and tachograph rules.

Ms Black knew that drivers were not completing daily time sheets – pages 19, 20, 28. Ms Black knew that drivers were not handing in analogue tachograph records – page 30.

Hardhill did not download driver cards for Mhairi MacAuley, Robert Campbell, “John” Peter McCauley, David Shearer, or Brian Kelly. Ms Black was responsible for downloading driver cards.

Hardhill did not have proper systems in place to check that drivers were complying with the drivers’ hours and tachograph rules.

(4) Acting if there is evidence of non-compliance

There was no evidence of any disciplinary procedure being implemented during the period of analysis and I find that there was no disciplinary procedure in place during the period of analysis. Ms Black produced a document headed “Weekly Procedure Commencing 22<sup>nd</sup> December 2014” (Tab H of the DVSA productions) which stated that digital tachographs should be used on school runs in out of scope mode, any movement of vehicles other than yard shunting must be recorded with a driver card or an analogue disc (including fuelling), no buses should be used for personal use unless approved by Mr Whatley and the mileage had to be recorded on the driver work sheet as private use. It also said that Ms Black would be running weekly reports on missing mileage. The document went on to say that the analysis software had been producing worrying information regarding driver infringements and Hardhill intended putting in place a points system- if a driver reached a certain limit they would be disciplined. For whatever reason this embryonic disciplinary system was never implemented.

## Decision

192. I have considered the guidance issued by the Senior Traffic Commissioner, in particular Statutory Documents Nos 1, 3 and 10. I am, of course, aware that the Statutory Guidance is ‘guidance’ and it is my duty to interpret the legislation and to apply the legislation in light of the case law. I remind myself of the observations of the Inner House of the Court of Session in the case of *Thomas Muir* 1999 SC 86.
193. Before making any finding on whether or not Hardhill has lost its repute as operator I need to ask myself the following questions:-
194. How likely is it that this operator will, in the future, operate in compliance with the operator’s licensing regime? – the question set out in the case of *Priority Freight Ltd v Paul Williams* 2009/225;
195. Is the conduct such that the operator ought to be put out of business? – the question set out in *Bryan Haulage (No.2)* 2002/217;
196. In answering the *Bryan Haulage* question I am required to carry out a balancing exercise – to identify the factors that are in the operator’s favour and those factors that weigh against the operator. This involves a three stage process:-  
 (first) the identification of all the relevant factors  
 (second) an assessment of each factor, and  
 (third) my conclusion – why one factor or group of factors outweighs another or others.

The Priority Freight question- How likely is it that this operator will, in the future, operate in compliance with the operator's licensing regime?

I was assured by Ms Black and Mr Whatley when they gave evidence that they had made great progress in dealing with the issues that had been identified by TE Stoner in her report. TE Stoner agreed that progress had been made by the time of the Public Inquiry. It is, however, disappointing that there were still vehicles being driven without a card in June and July 2017. The last unexplained occasion was on 2 July, less than two weeks before the Public Inquiry began. Ms Black explained that she had been on holiday and had not been able to fully investigate all of the occasions. It is disappointing that some of the occasions, although explained, were for reasons e.g. fuelling and drivers taking buses home that Ms Black had assured me were no longer permitted. Ms Black told me that she had implemented a system that no vehicle would leave the yard without a driver card in it other unless it was going to the workshop or a work bay. It would appear that the system was not being adequately enforced by the time the Public Inquiry began. Ms Black did say in her submissions in September that since the beginning of the Public Inquiry in July 2017 she had made further changes.

197. Mr Whatley was adamant that Hardhill's processes and staff were now in place to run a compliant business. He was confident that he could prove to the DVSA that he ran a compliant business and he assured me that I did not need to worry that Hardhill might not be compliant in the future.
198. In all the circumstances, I am prepared to accept what I was told by Ms Black and Mr Whatley and to trust that Hardhill learned from the experience of the DVSA investigation and the Public Inquiry. I am prepared to accept the assurances given to me that Hardhill would be a compliant operator from September 2017 onwards.
199. The Bryan Haulage question – is the conduct such that Hardhill ought to be put out of business?
200. Having considered all of the evidence I am of the opinion that Hardhill's conduct is not such that they ought to be put out of business.
201. Hardhill were a poor operator but they were making improvements. They had issues with maintenance that were resolved with the assistance of the DVSA. Hardhill had issues with drivers' hours and tachographs. These issues were longstanding -since at least 2013. It seems to me that Hardhill, and by that I mean Mr Whatley, failed to understand the importance of complying with drivers' hours and tachographs rules. Mr Whatley seems to have thought that Ms Black's appointment as Transport Manager was enough to ensure compliance. He did not take any steps to check whether or not his business was in fact compliant.
202. Mr Whatley expected Ms Black to perform other duties as well as being Transport Manager. Ms Black was expected to manage the business when Mr Whatley was away in Spain for extended periods of time, she was responsible for accounts and payroll and driving. This has now changed. Ms Black is

concentrating on being a Transport Manager and others have taken on her other roles. It seems to me that the overloading of Ms Black, an inexperienced Transport Manager, with other duties was a significant cause of Hardhill's non-compliance for which I hold Mr Whatley responsible.

203. Hardhill have taken steps to be a compliant operator. While they could not demonstrate that they were fully compliant at the time of the Public Inquiry I have decided to accept Mr Whatley's assurances that they had learned from the experience of being at Public Inquiry, that they would be compliant in the future and that I would not see them at Public Inquiry again. In these circumstances I am satisfied that Hardhill's conduct was not such that they should be put out of business.
204. I should make it clear that the reason that I have decided to take the exceptional course of not revoking the licence is because I felt that I could trust Mr Whatley and Ms Black when they gave me assurances that they had learned their lesson from the experience of the Public Inquiry and that going forward Hardhill would be a compliant operator.
205. I am, however, satisfied that a warning, as suggested by Ms Turner, would not be a proper response to Hardhill's conduct.
206. Hardhill should have taken steps long before the Public Inquiry to remedy the deficiencies in their systems to ensure compliance with the rules on drivers' hours and tachographs. It is clear that Hardhill did benefit from their non-compliance. If I simply gave Hardhill a warning, other operators that comply with the regulatory regime would be entitled to feel that there is little point in them doing so. Hardhill obtained a commercial advantage from their non-compliance-for example drivers carried out hires when they did not have sufficient rest, drivers removed cards when they ran out of time. If Hardhill had been a compliant operator then Hardhill would have had to have hired additional drivers to service the work that they had. It is appropriate for me to take some action to recognise the commercial advantage that Hardhill obtained from their non-compliance.
207. Mr Whatley gave evidence that Hardhill could cope with a curtailment to 10 vehicles for a period of months. Hardhill have applied for an increase in their authority from 14 vehicles to 16 vehicles. They have also applied to change the licence from a standard national licence to a standard international licence in order, according to Mr Whatley, to enable them to take over a contract for hire work that involves travel to Ireland.
208. I am of the opinion that in this case an appropriate sanction is:-  
(1) The operator licence held by Hardhill Private Hire Ltd is curtailed from 14 vehicles to 10 vehicles with effect from 22 October 2018, I direct that this curtailment will be for a minimum of three months. No increase in authorisation will be granted without a formal variation application.  
(2) I refuse the application for an increase in authority.  
(3) I refuse the application to change the licence to a standard international licence.

(4) Hardhill is given the severest warning on repute short of revocation.

209. I have decided upon the curtailment to 10 vehicles because of the need to reset fair competition and because Hardhill need to prove that they can be fully compliant. No doubt it will hurt Hardhill but they will be able to remain in business and Mr Whatley said that Hardhill would be able to cope with such a curtailment. The reason for the delay in the curtailment is because school contracts may need to be re-tendered. The refusals of the changes to the operator licence at this time will give Hardhill the opportunity to demonstrate that they can be compliant before they are allowed to expand their business further. The warning will remind Hardhill that they have come very close to losing their repute as operators and therefore their business.

Ms Gemma Black Transport Manager

210. I have found that Ms Black's failings were due to inexperience and pressure of work. I consider that in this case the lion's share of the blame for Hardhill's non-compliance rests with Mr Whatley – he should have known that Ms Black was struggling and he should have taken steps to help her.
211. I note that Ms Black was under particular strain because of her mother's illness from July 2016 onwards. It seems to me that this explains why Ms Black failed to take steps to deal with the significant levels of breaches of the rules relating to drivers' hours and tachographs in the analysis period from 1 August to 31 October 2016. This is an important reason why I have not reached the view that Ms Black has lost her repute as transport manager.
212. These are an exceptional set of circumstances that while they explain Ms Black's conduct in the past, it will not excuse her in the future.
213. I am prepared to accept Ms Black's assurances that, both before and during the Public Inquiry, she was taking steps to ensure that Hardhill complied with the drivers' hours and tachograph rules.
214. I give Ms Black the severest warning on her repute as a Transport Manager short of disqualification. I am trusting her to ensure that Hardhill is a compliant operator.

Hugh J Olson  
Deputy Traffic Commissioner  
Edinburgh

13 September 2018