



TRAFFIC COMMISSIONER FOR WALES

**The Skiers Lodge Ltd t/a TSL – PD1025479
&
Transport Manager – Andrew Martin
&
TSL (Wales) Ltd – PG2012783
&
Transport Manager – John Alan Jackson
&
Express Airport Transfers (Europe) Ltd t/a EAT – PD2003185**

Public Passenger Vehicles Act 1981 (“the 1981 Act”)

Decisions made in respect of the operator’s licence held by The Skiers Lodge Ltd t/a TSL PD1025479

1. The operator failed to operate a local bus service that it registered with the traffic commissioner, section 26(1)(a) of the Transport Act 1985.
2. The operator operated a local bus service outside of the timings that it registered with the traffic commissioner, section 26(1)(b) of the Transport Act 1985.
3. Adverse findings are made under sections 17(3)(a); 17(3)(aa); 17(3)(b); and, 17(3)(c); of the 1981 Act.
4. The operator no longer satisfies the requirement to be of good repute, section 13A(2) and 17(1)(a) of the 1981 Act.
5. The operator continues to satisfy the requirement to be of sufficient financial standing and regulatory action is not taken on this issue, section 13A(2) of the 1981 Act.
6. The operator no longer satisfies the requirement to be professionally competent, section 13A(2) and 17(1)(a) of the 1981 Act.

7. The operator's licence is revoked. The date of revocation is effective at 0001 hours on 18 March 2019.

8. The Skiers Lodge Ltd is disqualified from holding or applying for an operator's licence for an indefinite period.

9. Andrew Martin is disqualified from holding or applying for an operator's licence for a period of two years from the date of the public inquiry held on 4 October 2018, section 85 of the Transport Act 1985.

10. I do not make any order under section 151 of the Transport Act 2000, however this is primarily because I have revoked the operator's licence.

Decisions made in respect of Transport Manager Andrew Martin

11. Transport Manager Andrew Martin has lost his repute as a transport manager. He is disqualified from applying for or holding an operator's licence anywhere in the EU until he re-qualifies by passing fresh examinations.

Decisions made in respect of the application for a PSV operator's licence by TSL (Wales) Ltd t/a Easybus PG2012783

12. The applicant has failed to satisfy me that it is of good repute, section 14ZA(2)(b) and schedule 3 of the 1981 Act.

13. The applicant has failed to satisfy me that it is professionally competent, section 14ZA(2)(d) and schedule 3 of the 1981 Act.

14. The applicant has failed to satisfy me that it has a designated transport manager who is of good repute, Article 4 of EC Regulation 1071/2009 and section 14ZA(3)(a) of the 1981 Act.

15. The applicant has failed to satisfy me that it has satisfactory arrangements for maintaining vehicles in a fit and serviceable condition, section 14ZC(1)(a) of the 1981 Act.

16. The applicant has failed to satisfy me that it has satisfactory arrangements to comply with the law regarding the driving and operation of vehicles, section 14ZC(1)(b) of the 1981 Act.

17. The application for an operator's licence is refused.

Decisions made in respect of Transport Manager John Alan Jackson

18. Transport Manager John Alan Jackson has lost his repute as a transport manager. He is disqualified from applying for or holding an operator's licence anywhere in the EU until he re-qualifies by passing fresh examinations

Decisions made in respect of the operator's licence held by Express Airport Transfers (Europe) Ltd t/a EAT PD2003185

19. The operator no longer satisfies the requirement to be of good repute, section 14ZA(2) and 17(1)(a) of the 1981 Act.

20. The operator no longer satisfies the requirement to be professionally competent, section 14ZA(2) and 17(1)(a) of the 1981 Act.

21. The operator no longer has a transport manager who is professionally competent and of good repute, section 17(1)(b) and 17(1)(a) of the 1981 Act.

22. The operator's licence is revoked with effect from 1 April 2019.

Background

23. Andrew Martin is sole director of three legal entities which were called before me at public inquiry: The Skiers Lodge Ltd t/a TSL, PD1025479, a standard international PSV operator's licence granted in 2003 which at the date of the public inquiry had 10 discs; TSL(Wales) Ltd PG2012783 t/a Easybus, an application for a standard international PSV operator's licence with 20 discs sought; and, Express Airport Transfers (Europe) Ltd PD2003185 t/a EAT , a standard international PSV operator's licence granted in 2017 and at the time of the public inquiry having 13 discs.

24. Andrew Martin was transport manager for The Skiers Lodge Ltd; John Alan Jackson was proposed transport manager for TSL (Wales) Ltd; and, Andrew Martin was recently nominated as transport manager for Express Airport Transfers (Europe) Ltd, Stephen Bryce being the former transport manager on that licence.

25. A number of concerns led to my convening a public inquiry for all three entities where Andrew Martin was director. The Skiers Lodge Ltd had registered services in Wales but there were significant issues raised with both timetable and road safety problems; and, TSL (Wales) Ltd appeared to be operating without a licence having been granted. The Express Airport Transfers (Europe) Ltd licence had apparent issues including ones relating to professional competence.

Public Inquiry

26. A public inquiry was convened for 4 October 2018 in Welshpool, there was considerable public and press interest illustrated by the significant number of members of the public who stood throughout the proceedings which lasted a very full day. Attendance included the following:

- Andrew Martin, director of all three entities before me, also in attendance to consider his repute as a transport manager
- John Alan Jackson, (commonly known as Alan), called to consider his repute as a transport manager
- VE Mark Williams
- TE Sarah O'Brien
- Martin Garlick DVSA Vehicle Enforcement Manager (SVE) for North Wales
- Simon Jenkins, DVSA Traffic Enforcement Manager (STE) for North Wales
- Bus Compliance Officer, Nesta Jones
- Barclay Davies, Director of Bus Users Cymru

27. At the conclusion of the hearing I indicated that I would be producing a full written decision, although there would be some delay due to significant IT problems that I had suffered. To assist with future planning I advised both transport managers, who had been called before me to consider their repute, that I was likely to order both loss of repute and

disqualification until they re-qualified afresh, indicating that attendance at refresher courses would not address my concerns. I also indicated that my decision would confirm revocation of both existing licences and refusal of the application for a new operator's licence.

Preliminary Directions

28. Notification of the conjoined public inquiry for the three limited companies and the two transport managers included formal notice that former transport manager Stephen Bryce would be in attendance along with a former employee, Neil Jones, both had written to me with serious allegations about Andrew Martin. Notice of the allegations having being provided to Andrew Martin, shortly before the hearing I received several bundles of evidence, I am grateful that it was paginated. Bundle D ended at page 1190.

29. It was evident that the bundle produced by Andrew Martin contained very detailed allegations in respect of his former employees, Stephen Bryce and Neil Jones. It was obvious to me that if I was to consider the very substantial bundles produced by Andrew Martin that I would in effect be asked to determine issues of fact in relation to employee disputes with apparent references to litigation before a specialist Employment Tribunal. Additionally I had potential concerns as to how some of the evidence in the bundle produced by Andrew Martin had been sourced, including issues as to both propriety and legality.

30. Reflecting on the rules of natural justice I came to the view that if I considered the very detailed evidence produced by Andrew Martin that I would have to copy it in its entirety for both Stephen Bryce and Neil Jones with view to an adjourned hearing which I anticipate could have lasted a number of weeks. I was conscious of the clear guidance from the Upper Tribunal and its predecessor the Transport Tribunal which has on a number of occasions indicated that adjudicating traffic commissioners should not attempt to become too embroiled in employer/employee matters, which was for another tribunal. I also reflected on the potential relevance of the very detailed bundles, they demonstrated very considerable animosity between Andrew Martin and his former employees.

31. Whilst Andrew Martin was obviously unhappy with his former employees, when they were employed by him they had ostensible authority. Whether or not Andrew Martin was justified in having a low opinion of his former employees, as the sole director and controlling mind of the various entities before me, whatever they did was with his ostensible authority. I came to the view that it was in the public interest that I made findings of fact and determinations in relation to the core issues which were before me at public inquiry and not on the employment issues in relation to Andrew Martin and his former employees. Accordingly I made a decision that I would exclude the bundle of evidence in relation to the two former employees which had been produced by Andrew Martin and I would not call them or hear from them at the public inquiry. Having re-read all the files and the transcript of evidence I am of the opinion that my directions were correct on this point. For the avoidance of doubt I have excluded from my deliberations everything contained within the bundle produced by Andrew Martin relating to his dispute with his former employees - and additionally - I have excluded the written allegations from Stephen Bryce and Neil Jones.

32. Neither Neil Jones nor Stephen Bryce had been given any notice that their repute as transport manager was an issue under consideration. The law on this very clear, there is a requirement for at least 28 days' notice to be given prior to any hearing to consider transport manager repute.

Evidence

33. Before preparing this written decision, I have reviewed the following:

- Written public inquiry brief for The Skiers Lodge Ltd PD1025479 and transport manager Andrew Martin;
- Written public inquiry brief for the application by TSL (Wales) Ltd PG2012783 and transport manager John Alan Jackson
- Written public inquiry brief for Express Airport Transfers (Europe) Ltd PD2003185;
- Contemporaneous handwritten notes from the hearing;
- A transcript of the hearing;
- Evidence given to me during the hearing;
- Further written evidence and submissions from Andrew Martin received two weeks after the hearing;
- South Bucks District Council and another v Porter (FC) (2004) UKHL 33 in relation to written decisions generally – although I hope this is regarded as a full reasoned decision, I have not sought to reflect the entirety of the evidence; and,
- Aside from those quoted below, various authorities in relation to the approach to regulation, fitness, proportionality, and the burden of proof. – Thomas Muir (Haulage) Ltd v Secretary of State for the Environment, Transport and Regions (1999) SLT 666; Crompton trading as David Crompton Haulage v Department of Transport, North Western Area (2003) EWCA Civ 64; Muck It Ltd and others v Secretary of State for Transport (2005) EWCA Civ 1124; 2009/225 Priority Freight Ltd and Paul Williams; Fenlon 2006/277; and, 2002/217 Bryan Haulage (No. 2).

34. Prior to hearing evidence or submissions I explained to those present why I was not considering allegations made by or against Stephen Bryce and Neil Jones. Additionally, I explained to Andrew Martin that much of my approach to matters including that relating to finances was set out in statutory guidance issued by the Senior Traffic Commissioner, it transpired that the statutory guidance had not been seen by Andrew Martin.

35. It was established in respect of the requirement for financial standing that:

- The licence PD1025479 for the West Midland Traffic Area, The Skiers Lodge Ltd granted in 2003 had sufficient finances for the 10 discs authorised;
- TSL (Wales) Ltd, PG2012783 was an application for 20 discs in the Welsh Traffic Area, there was sufficient finances for the five discs that were sought at the commencement of the public inquiry; and,
- The licence PD2003185 for the West Midland Traffic Area, Express Airport Transfers (Europe) Ltd t/a EAT only had sufficient finances for eight discs and not the 13 discs authorised at the time of the public inquiry.

36. In addition to being sole director for all three entities before me, Andrew Martin was transport manager for The Skiers Lodge Ltd and sought to remain in that position; John Alan Jackson was nominated as transport manager for the applicant company TSL (Wales) Ltd, but Andrew Martin now sought to replace him as transport manager; and, Stephen Bryce was formerly transport manager for Express Airport Transfers (Europe) Ltd, there was no current authorised transport manager in post, but Andrew Martin sought to fulfil that role.

37. It was established that if I granted a licence for TSL (Wales) Ltd that the licence for Express Airport Transfers (Europe) Ltd would be surrendered.

38. Andrew Martin explained that he had been involved in PSV operating for about 30 years, including in France, where he had sold his PSV business to another entity in 2017. He had operated in GB in the 1980s and 90s. Andrew Martin confirmed that he qualified as a transport manager in approximately 1998 and whilst he had not attended a specialist transport manager refresher course, one was booked for later in the year.

39. It was established early in the public inquiry that one of the significant features of the hearing related to whether or not premises apparently being used amounted to being an operating centre. Initially Andrew Martin claimed before me that the DVSA had provided no evidence that vehicles were at an operating centre in Rhosymedre, Wrexham. I was also told by Andrew Martin that he had asked for a clear answer from the DVSA as to the legal position relating to the definition of an operating centre, I responded that he would have been given an answer if he had asked a specialist transport lawyer or specialist transport consultant. I pointed out that the law was clear and that vehicles should normally be parked at an approved operating centre when not being operated or maintained.

40. VE Mark Williams attended at Rhosymedre on 6 July 2018, to commence his investigation. During the hearing before me the examiner was challenged by Andrew Martin when he claimed that the vehicles appeared to have been there overnight. VE Mark Williams pointed out that the engines were cold. Andrew Martin appeared to be claiming that they were at the premises as they had an arrangement with Fleetserve Engineering Ltd who shared the same unit. Andrew Martin claimed that they were there for maintenance and happened to be there for the night. On being questioned whether he was saying that on every single night that the vehicles were there, were they being maintained? Andrew Martin said he was not suggesting that. He accepted that on some occasions vehicles were not being maintained at the site in Rhosymedre but claimed that this was not illegal.

41. One of the annexes provided to DVSA reports included a copy of a contract dated 26 June 2018 between TSL (Wales) Ltd and The Skiers Lodge Ltd. it purported to allow The Skiers Lodge Ltd access to premises owned by TSL (Wales) Ltd at its proposed operating centre in Rhosymedre. Paragraph 15 confirmed that access was provided for the following purposes only:

1. *the daytime or overnight maintenance, repair, defect rectification, safety inspections, MOT preparation of its vehicles used on the Contract by the Contractors registered maintenance provider: Fleet Serve Engineering Ltd.*
2. *The temporary parking of its vehicles whilst use on this Contract.*
3. *The temporary parking of private vehicles owned by its drivers used on this Contract.*
4. *The temporary storage and supply of its own road diesel.*

42. The contract then sets out in bold type *“For the avoidance of any doubt. Nothing in this paragraph, or entire Contract, creates the existence of a Vehicle Operating Centre for the Contractor.”*

43. Paragraph 16 of the Contract reads: *“During every period of 2 (two) weeks a vehicle is used for this temporary Contract it must return to the registered Operating Centre of the Contractor, as recorded on their PSV operator’s licence, at least once.”*

44. Paragraph 17 of the Contract reads: *“The Contractor confirms that all vehicles used for this Contract have been “normally kept” (sic) at its registered Operating Centre for at least the previous 26 weeks prior to commencement of this Contract. (Unless the vehicle*

has been acquired by the Contractor within this period). The Contractor further agrees that all vehicles used for this Contract will continue to be “normally kept” (sic) at its registered operating centre for at least the subsequent 26 weeks following the ending or termination of this Contract. Unless the vehicle is sold, transferred, hired, loaned, assigned, or otherwise dispose of, during this period.”

45. I commented at the public inquiry on what appeared to be an attempt to circumvent the legal requirement for an operating centre and pointed out that case law referred to the desirability of full and proper records of any hire agreement between the two parties. In this case the two limited companies had Andrew Martin as sole director and the arrangement was signed by him twice, in the capacity as director of the two entities.

46. VE Mark Williams confirmed that his maintenance investigation commenced on 6 July 2018 for the following reasons:

1. to check the condition and roadworthiness of the vehicles being operated.
2. To check the maintenance arrangements and procedures currently in use.
3. Follow-up after multiple prohibitions issued to vehicles within the previous 16 month period.
4. To confirm that an unauthorised operating centre in Rhosymedre was in use.

47. A maintenance investigation had been carried out and concluded in December 2017, however since that investigation the driver defect reporting system had been changed and the operating centre at Rhosymedre had been used as well as additional service routes around the Wrexham area. The maintenance provider was also different.

48. When VE Mark Williams attended at 05:50 hours on Friday, 6 July 2018 it was an unannounced visit to the premises at Rhosymedre, he was accompanied by VE Phillip Bramham, VE Gwyn Griffiths TE Sarah O'Brien and STE Simon Jenkins. Five vehicles were being prepared for the working day, only two were clear of defects. It was confirmed to examiners that no vehicle records or forward planner was retained at this site, records being held at the Shrewsbury operating centre.

49. There was evidence of driver defect reporting cards inside the office in Rhosymedre.

50. On Thursday, 12 July 2018 VE Williams accompanied by TE Sarah O'Brien visited the Shrewsbury premises for a prearranged meeting with Andrew Martin, he was also specified as the transport manager. It was confirmed that there was a maintenance agreement in place with Fleetserve Engineering Ltd which had been made on 7 February 2018, this was provided by Andrew Martin but it did not list the vehicles or the frequency of the PMI periods. Andrew Martin told the examiner is that he was pleased with the maintenance work.

51. As an aside I comment that the maintenance contract suggested that the maintenance contractor was “*entitled to assign or subcontract this agreement or any part thereof*” a feature that I would not expect to see as there is a duty to ensure that the traffic commissioner is always informed as to who undertakes maintenance.

52. Andrew Martin told the examiners that the company vehicles had been the subject of sabotage and showed them a piece of copper pipe which he stated had been removed from one of his vehicles recently with some small cuts possibly made by hacksaw or similar device; he stated that he suspected his former transport manager. During this discussion the company drivers' handbook was produced which was checked in relation to driver defect reporting and walk round checks.

53. Andrew Martin was described as being keen to discuss a recent prohibition issued to a vehicle on 3 July 2017 from a leaking fuel tank. He stated that the vehicle had been left unattended by a driver in Llangollen while on a break, when the driver returned there were two DVSA officers on site and a pool of diesel under the fuel tank of the vehicle, he insinuated that the DVSA officers had sabotaged the vehicle and showed the two examiners a photograph on his mobile phone which showed a rusty object with a large hole in it. It was claimed that the vehicle had broken down earlier that day and had been repaired at the roadside, Andrew Martin suggested that if the fuel tank had been leaking it would have been noticed by maintenance staff at that time. VE Mark Williams explained to me at the hearing that his understanding of the breakdown was that it was a fan belt broken on the rear of the engine and was it not in the vicinity of the fuel tank.

54. On being asked for maintenance files for three separate vehicles, files were produced for two only, they contained a PMI report that had been completed as part of an annual test preparation and included the test card and brake print out, there were no other PMIs in the files. It was suggested by Andrew Martin that both of the vehicles had recently gone into service and if the examiners were to return later in the month there would be another six weekly inspection. The vehicle file for the third vehicle could not be located, examiners were told that it was probably at the Wrexham depot as repairs were ongoing.

55. Driver defect reporting was discussed and the system was described by VE Mark Williams as very comprehensive. However he found examples of completed cards where drivers had failed to record dates and vehicle registrations; furthermore, nil defects had not been completed as set out in the company's drivers' handbook.

56. There was no forward planner for maintenance at the Shrewsbury depot according to the evidence of VE Mark Williams. This was disputed by Andrew Martin at the public inquiry, I pointed out that it needed to be available for inspection by DVSA examiners. Andrew Martin explained to me at the public inquiry that maintenance records were kept at more than one site, this led to my pointing out the stable establishment requirements for an operator's licence, which included the obligation to keep records at one site.

57. It was stated by Andrew Martin that some of the vehicle maintenance was carried out at his premises on the Vanguard Industrial Estate, Battlefield, Shrewsbury he gave an address as Unit H Vanguard Industrial Estate. The property was visited later that day from the outside only; it was perceived by examiners as appearing to be a retail outlet and unsuitable for large PSV maintenance.

58. During the hearing before me, Andrew Martin claimed that he offered to take VE Mark Williams to the unit to view the forward planner but that the examiner had said that it was not necessary. VE Mark Williams told me that he did not remember Andrew Martin asking if examiners wanted to go to the Unit. TE Sarah O'Brien advised me at the hearing that she was present when the conversation took place but did not recall exactly what was said.

59. On Friday, 13 July 2018 at 08:00 hours VE Mark Williams visited the operating centre at Rhosymedre and spoke to employee Alan Jackson who was asked for the maintenance file for the vehicle referred above where no files available in Shrewsbury. Alan Jackson told the examiner that all maintenance files were kept Shrewsbury. Maintenance providers were not on site but were due in at 10:30, when the examiner returned at that time the premises were locked up and VE Mark Williams waited until 11:15 before leaving.

60. On Thursday, 19 July 2018 VE Mark Williams was given details of an anonymous report relating to a wheel loss that occurred at approximately 18:00 hours the previous evening on the A483 dual carriageway between Wrexham and Oswestry, it involved a PSV in the livery of Easybus (a trading name of The Skiers Lodge Ltd and TSL (Wales) Ltd). After confirming that the incident had not been reported to the DVSA as required, the examiner went to the scene to look for further evidence, he did not find anything at the roadside. At 12:30 hours VE Mark Williams visited the premises at Rhosymedre.

61. Neil Jones met with VE Mark Williams at Rhosymedre, he was acting as transport coordinator as Alan Jackson was out driving on a service route. Neil Jones was asked if there had been a breakdown the previous evening and he confirmed that there had been, he thought that it had been a tyre. The examiner asked if he could look around the workshop, maintenance engineers were on site. He noticed a vehicle, an Optare Solo MX07JOJ, in the corner of the workshop with both offside rear wheels removed. In the opposite corner of the workshop there was a pair of rear wheels from an Optare Solo. On inspecting the wheels it was apparent that they had been run loose as the wheel stud holes were worn and elongated, the mating services were bright, indicating movement had been present. The outer wheel had deep marks in the centre, similar to that which would have been made as the wheel contacted the end of the half shaft as it left the axle. Photographs on file produced to me confirmed that the wheels were the result of the previous evening's breakdown.

62. The driver had reported a rumbling noise from the rear at approximately 17:15 and was asked if it could be limped back to the depot at reduced speed, the outer wheel became detached however it stayed close to the vehicle. These wheels had been removed from the nearside rear axle after a temporary repair had been effected at the roadside. It was confirmed that the wheel studs, nuts and wheels had been replaced and the vehicle returned to service for the morning of 19 July 2018. VE Mark Williams was asked when the last time the wheels had been removed from that vehicle and it was confirmed that the nearside rear hub oil seal had been replaced earlier in the morning of 18 July 2018, this would have required the wheels to be removed. The work had been completed and the wheels torqued to manufacturer recommendations. The technician had apparently requested that the vehicle be road-tested and re-torqued, however it was returned to service instead as the route was too tight for the larger vehicles in possession of the operator.

63. At the hearing before me I asked whether the examiner was of the view that the vehicle should not have been on the road, he confirmed that this was the case. Andrew Martin agreed and blamed Neil Jones.

64. The torque wrench was inspected and found to be a recent purchase, the calibration certificate was present. It was noted that the torque wrench was still set to 400NM despite best practice being to return the torque wrench to zero after each use. The mechanic told VE Mark Williams that the operator did not use wheel nut indicators. On being asked where the damaged wheels studs were, he was told that they had been placed in the refuse bin which had been emptied shortly before his arrival.

65. It was established that Alan Jackson had also been driving the previous day and that he had left the premises at the end of his shift at 16:45 hours. The defect was phoned in at approximately 17:15 hours. The driver defect card for 16 July 2018 indicated that the vehicle had been defective with smoke coming out of the nearside rear wheel arch after the first trip. It was also shown to be returned to service on 18 July 2018 after the nearside rear hub seal and disc pads had been replaced.

66. VE Mark Williams explained that this was the first time that he had been able to talk to the maintenance provider. It was confirmed that the maintenance provider had not been given a forward planner as it had been agreed that TSL (Wales) Ltd would supply this. The technician confirmed that he did not have, nor never had any of the vehicle files; all inspections records were sent to Shrewsbury.

67. It was confirmed that the Optare Solo MX07JOU had been returned to the operator ready for the morning service and that the current driver was the same one as when the wheel had become detached. Neil Jones told the examiner that Andrew Martin had a meeting with the driver at the start of the shift on 19 July 2018. VE Mark Williams explained to Neil Jones that as the breakdown had been a wheel loss it should have been reported to the DVSA. He left the operating centre at 13:55 and drove to Wrexham bus station to inspect the nearside wheel hub on MX07 JOU as he was aware that it had not been replaced.

68. At 14:55 MX07 JOU drove into the Wrexham bus station and VE Mark Williams spoke to the driver, Mrs Nicola Benson, who confirmed that she had been the driver of the vehicle the previous evening. Mrs Benson told the examiner that she had repeatedly reported smoke coming from the rear nearside hub and had eventually refused to drive MX07 JOU on 16 July 2018, before the fault was investigated satisfactorily. The vehicle had been repaired and was returned to her, mid-shift on 18 July 2018, coming straight from the workshop. She stated that she reported a rumbling from the rear at around 17:00 and was asked if she could limp it back to the depot, the wheel became detached but stayed close to the vehicle which the examiner believed was evidence that the vehicle was being driven at slow speed. Mrs Benson confirmed that there were no wheel nut indicators fitted to the vehicle. It was also established that she had had a meeting with Andrew Martin at the start of her shift on 19 July 2018 and that Andrew Martin was aware that the breakdown had been a wheel loss incident.

69. There was factual dispute between VE Mark Williams and Andrew Martin relating to the examiner's account of his conversations with the driver, Mrs Benson. At one point Andrew Martin interrupted VE Mark Williams's oral evidence to say "*I am sorry, Mr Williams, that is a lie.*" It was claimed by Andrew Martin that Mrs Benson had not spoken to him because at the time he was in a hospital bed, a statement had been produced to me from Mrs Benson contradicting what the examiner wrote in his evidence and what the examiner told me in his oral evidence.

70. VE Mark Williams told me "*I recall specifically asking her if she had had a meeting and was Mr Martin aware of the wheel loss and I was told that, yes, she had had a meeting and, yes, he was informed of the wheel loss.*"

71. Andrew Martin pointed to evidence that he had provided to me confirming a hospital appointment, however he also admitted that he had earlier told me that he was dealing with work from his hospital bed.

73. VE Mark Williams inspected the wheel hub and found it to be satisfactory, it was noted that there were no wheel nut indicators fitted to any of the wheel nuts on the vehicle.

74. I was told by VE Mark Williams that an email was received from Andrew Martin at 14:30 indicating that he was looking for a way to report the wheel loss to the DVSA, VE Mark Williams pointed out that this email was received 40 minutes after he had told Neil Jones that the incident should have been reported. A reply was sent to Andrew Martin at

09:30 on 20 July 2018 when VE Mark Williams next logged on, he sent the correct form and highlighted the completed paperwork which was required as soon as practicable. As pointed out by VE Mark Williams, in the circumstances of a wheel loss the vehicle must not be repaired or used on the public highway until staff at the local DVSA office have contacted the operator. Andrew Martin had commented that he was going to carry out a full investigation into the incident, although no further details were forwarded to the examiner in relation to any investigation by Andrew Martin.

75. Both in his public inquiry statement and in his oral evidence VE Mark Williams was of the view that if he had not been made aware of the wheel loss incident from sources other than the operator, the incident would not have been reported at all.

76. VE Mark Williams considered the investigation to be unsatisfactory as:

1. 5 vehicles were inspected at a fleet check but only 2 were clear of defects.
2. The examiner was unable to determine the inspection frequency due to vehicles entering service in June 2018. The Maintenance file for one vehicle could not be located at the Shrewsbury depot on one day or the Wrexham depot the next day. It was also confirmed that that file was not with the maintenance provider.
3. No maintenance forward planner was seen at either location (Shrewsbury or Wrexham) and it was confirmed that it was not with the maintenance provider.
4. Whilst a copy of a maintenance contract was provided, there were no vehicles specified and the inspection frequency was not set out.
5. It was noticeable that there was a lack of large workshop equipment.
6. Premises at Rhosymedre were being observed as being used as an operating centre for vehicles assigned to Wrexham and Llangollen service routes.
7. Since 15 March 2017 11 vehicles had been issued with a prohibition notices for 11 immediate and 5 delayed defects.
8. Wheel loss incident of 18 July 2018.

77. At the Rhosymedre depot there was a large building suitable to contain more than six large PSVs. There were a set of four-wheel lifts suitable for carrying some aspects of underside vehicle inspection for the largest of the buses, however VE Mark Williams had concerns with the vehicle lifts when conducting checks to the steering mechanism whilst under load. This was explained in some detail at the hearing before me, it was clear that the DVSA view was that it would not be safe to properly check steering in a large PSV when using these lifts. SVE Martin Garlick was present and explained in detail why he was not satisfied with the maintenance arrangements, he told me that it was not safe to check on the steering on the load using the type of lifts utilised. A satisfactory check of the steering should involve rocking of the steering which, in his view, would make the vehicle unstable on the lifts.

78. It was suggested that the above concern was highlighted in relation to vehicle SJ53 AWX which was presented for a prohibition clearance on 27 July 2018 when it was issued with a delayed prohibition for a loose kingpin in the axle.

79. Comment was made on the lack of large workshop equipment which should have been available. Fleetserve Engineering Ltd attended the premises with a large Mercedes van which was well-stocked with tool storage and numerous hand and specialist tools.

80. Discussion ensued on the problems that occurred when mobile mechanics were used as they would not necessarily have access to rolling road brake tests. Andrew Martin claimed that rolling road brake tests were carried out but the DVSA told me that they did not see any paperwork relating to rolling road brake test except at pre-MOT inspection. As

DVSA had asked to see the maintenance files it would expect to see the evidence of regular rolling road brake tests.

81. Andrew Martin claimed that the vehicles had only just gone into service, however it was pointed out that pre-first use checks should have been carried out and these pre first use checks should have including rolling road brake tests.

82. Inspection records were viewed although VE Mark Williams was aware that another local area had recently completed a maintenance investigation. Due to Andrew Martin's claim that the majority of the fleet had only recently gone into service, there was only one PMI record of each of these vehicles (entering service in June 2018). The pro forma records reflected industry-standard however the file for SJ53 AWX which had been in service on 1 February 2018 and which had been prohibited on 3 July 2017 could not be located at Shrewsbury, Wrexham or with the maintenance contractor.

83. When the earlier maintenance investigation was conducted the operator was using a mobile phone application for driver walk round checks and recording. It can be continually updated throughout the working day and automatically sends emails to designated officers within the company as and when faults reported. However the operator had at the time of the investigation by VE Mark Williams stopped using that system and instead was using a vehicle defect card. Comment was made that the pro forma vehicle defect card provided space to record defects together with action taken with a box to sign off rectification work, it also provided for nil defect to be recorded as set out in the company's driver Handbook. Unfortunately this was not complied with.

84. A concern raised by VE Mark Williams that was not accepted by Andrew Martin followed an incident on 8 August 2017 as a result of the DVSA carrying out a road check when a 16 seat minibus being operated by one of Andrew Martin's companies was brought into a check site, it was being operated on an airport shuttle service. VE Mark Williams found that the rear row of seats had been removed to allow for luggage space which was an unauthorised alteration that as a result created three dangerous defects as there were now raised seat fixing lugs creating a trip hazard as well as holes in the floor surface, a loose mat had been placed to cover them. There were also seat belts left fixed-to both sides of the rear door that had been unbolted from the removed seat base which still had the fixing bolts at the ends of the belt which were unrestrained and would have been able to swing freely to a length of about 50 cm. Although there were no passengers on the vehicle, if luggage had been carried, there was no means of securing any items. Photographs were taken. Stephen Bryce appealed the prohibition, SVE Martin Garlick inspected the vehicle the following day and found that some of the items had been altered in what he considered to be an attempt to undermine the prohibition, the prohibition was not rescinded and was later cleared in the usual way at an ATF.

85. At the public inquiry before me Andrew Martin disagreed with SVE Martin Garlick, telling me that the vehicle manufacturer designed it so that two of the rear seats had a quick release to enable seats to be taken out and replaced by luggage. SVE Martin Garlick disagreed and told me that if it was designed to be a quick release, he would not expect studs to be stuck out of the floor, instead it would be on some sort of rail device on the floor. SVE Martin Garlick confirmed that he had nearly 20 years' experience.

86. Another concern which was not accepted by Andrew Martin related to a prohibition issued to MX05 EKZ on 28 June 2018. Andrew Martin had claimed that the vehicle had recently had the rear emergency window glass replaced and stated that the glass company had been at fault for not replacing the mandatory signs which would have been

in the form of stickers on the glass instructing passengers to break glass in an emergency. A pro forma invoice was supplied from the glass replacement company with a description to supply and fit the rear window. VE Mark Williams explained that in his experience it would be for the operator to replace mandatory legal lettering. I pointed out to Andrew Martin that this was the experience of industry generally and I was of the same view. In any event it was the legal responsibility on an operator and it was not a legal responsibility on a glass replacement provider.

87. Discussion ensued on Andrew Martin's expectations of others, he was told that he needed to manage that expectation and the buck stopped with him as the director of the entities holding operator licences. At this Andrew Martin agreed with me but pointed to the fact that it also applied to the transport manager at the time. I then pointed out that he chose his transport manager and his employees, the starting point was that if employees did things that were wrong and they were employed by the company then the principle of vicarious responsibility applied.

88. Whilst concern was expressed by VE Mark Williams at suggestions from former maintenance providers that there were unpaid bills, this was disputed by Andrew Martin. I pointed out at the hearing that the Upper Tribunal has previously indicated that in these circumstances a traffic commissioner should await a formal judgement prior to coming to a view on such matters rather than attempting to determine them him or herself.

89. A feature that took up a relatively significant proportion of the time at the public inquiry related to whether or not the operator was ordinarily parking vehicles when not in use at one of its operating centres in the West Midland traffic area at the Gledrid truck-stop in Oswestry. He commented that he found no evidence of the company using that site having visited on several consecutive Sundays when it was known that the operator had no vehicles in service. On none of those occasions did he find any of the operator's PSVs parked there, however the premises in Rhosymedre was where vehicles were parked when not in use.

90. Referring to VE Mark Williams's evidence relating to lack of use of the Gledrid truck-stop and the apparent operating from Rhosymedre, Andrew Martin told me "*What I would submit to you, sir, is that throughout Mark Williams' report he does not put into his report anything that does not suit his case.*"

91. VE Mark Williams was asked by me about photographs and confirmed that he had photographs taken on a Sunday showing all the registration numbers on vehicles parked at Rhosymedre and on the same Sunday he took photographs of the Gledrid truck stop showing no PSVs there with Easybus livery. Andrew Martin disputed this and suggested that VE Mark Williams was being selective and lacking objectivity in his evidence, he suggested that furthermore his evidence should be disregarded.

92. On being cross-examined by Andrew Martin, it was put to VE Mark Williams that he had been manipulated and influenced by Stephen Bryce and this created bias in his investigation and report. VE Mark Williams disagreed. Andrew Martin confirmed to me that he was questioning the integrity of VE Mark Williams.

93. The transcript of evidence confirms an exchange between Andrew Martin and VE Mark Williams's report referring to Andrew Martin being pleased with the work of the maintenance provider with four vehicles prepared for annual test. It was put to me by Andrew Martin that the examiner was told that 10 vehicles had been prepared with 10 passes and no advisories. In his oral evidence VE Mark Williams told me that he did not

recall the figure being 10, he was told it was either four or five, getting MOT data off the database was difficult because that did not equate to an operator's licence. I interjected to explain to Andrew Martin that as PSVs are not specified (unlike HGVs) accurate information as to MOT passes for PSVs was rarely available.

94. On being pressed on this by Andrew Martin, VE Mark Williams told me that he believed that he asked for vehicle registrations on the day and did not believe that there were 10 supplied.

95. Andrew Martin confirmed to me that he was suggesting that he gave him details of 10 vehicles and that the examiner deliberately put in a lower number in his report.

96. Andrew Martin and VE Mark Williams disagreed on evidence relating to whether or not a technician would have noticed a fuel leak whilst replacing a fan belt.

97. Andrew Martin and VE Mark Williams also disagreed on whether or not the examiner was told that the forward planner was kept at the Unit on the Vanguard Industrial Estate, Battlefield, Shrewsbury. On it being put that it was only five minutes drive away, VE Mark Williams said that if this had been said to him he would have taken the opportunity to go and visit.

98. At this point of the hearing VE Mark Williams told me that he wished to clarify a point referring to the number of vehicles which Andrew Martin claimed had received MOTs. He told me that he had a notebook which formed the basis of his public inquiry statement and wrote the six registrations that Andrew Martin gave him, so those were the ones that he undertook research on. Accordingly he was not given details of 10 vehicles.

99. I sought clarification from Andrew Martin as to the discussions that he had with the examiner about the forward planner, he told me "*he didn't really want to see a forward planner because... so he could write into his report that there wasn't one.*" He went on to show me a copy of a planning application which revealed that the premises at the Vanguard Industrial Estate had permission for the repair of vehicles and that if the examiner had gone into the premises he would have seen that they were suitable for this purpose.

100. VE Mark Williams pointed out that when he discussed the previous maintenance investigation with his colleague in Shrewsbury, he had commented that he would have been interested to see the Unit, because he didn't see it on his investigation, this was the reason why he, VE Mark Williams, had tried to find it. He accepted that this was not mentioned in his report to me.

101. There was challenge to a photograph produced in an annex by the examiner relating to the wheel loss incident. Andrew Martin put to the examiner that the photograph was taken from a vehicle travelling in the opposite direction, VE Mark Williams confirmed that it was not his photograph and in hindsight he should have put a note on the annex to confirm that it was not his photograph. It was a photograph by an anonymous member of the public.

102. Andrew Martin disputed that the member of the public was anonymous because if he was sent a photograph it would have been by a text message or email and he would know the source. At this point I explained that unattributed information is often supplied to the DVSA and forwarded as appropriate to relevant examiners, the individual who undertakes an investigation will not necessarily know who made the allegation.

103. Referring to whether or not there had been issues relating to payment for maintenance providers Andrew Martin told me “*my suggestion is he has put in evidence that suits, i.e. he wants to discredit me so he’s put in where there are disputes.*”

104. Further issues emerged on VE Mark Williams’s evidence as to where PSVs were parked when not in use, as referred earlier this was disputed by Andrew Martin. It emerged that aside from taking photographs the vehicle examiner had made notes in his notebook. As explained at the hearing, not all minutiae of evidence is set out in a public inquiry statement as often factual matters are accepted as correct. This case was one where factual evidence raised by an examiner was not accepted, hence the need to go into more detail prior to my making any formal finding of fact.

105. VE Mark Williams confirmed that his notebooks confirmed some further details. This showed that on Sunday 15 July 2018 he made a special trip to the Rhosymedre site, he noted registration numbers of several PSVs: YJ56 WUE; WJ56 WUD; MX07 JNU; YJ56 WVB; MX (inaudible on transcript) EKZ; LXZ62 (inaudible on transcript). He also made a note that there were other vehicles on the site that were too far away to take registrations. The notes were made at the time at the site.

106. Andrew Martin confirmed to me that at this stage he was not challenging that evidence but commented that the notebooks should have been submitted as evidence in the original bundle for the hearing; it was pointed out to him that the examiner would not have known that this specific issue was going to be disputed.

107. VE Mark Williams had confirmed that he saw similar on other days as he lived in the area but had not taken photographs or made notes of registration numbers. When this was put to Andrew Martin he commented “*I am suggesting that that may or may not be true. There is no evidence other than his word to support that.... I’m accepting that that is probably correct on that one occasion*”

108. VE Mark Williams confirmed that the other occasions when he saw similar on Sundays were during his leisure time, Andrew Martin challenged this.

109. Evidence continued after a luncheon adjournment, as referred earlier the tone of Andrew Martin’s evidence changed at this point. I reminded him that he had accepted the accuracy of VE Mark Williams’s note for that one occasion when he made a written record and took photographs, Andrew Martin responded “*I’m not disputing it. To be perfectly honest I’ve absolutely no idea whether the vehicles were there on that particular Sunday or not because I wasn’t there.*” He conceded that they would not be at the authorised operating centre because they could not be in two places at once. He then went on to tell me that he was not now taking any issue with the point.

110. Andrew Martin was asked about the evidence of TE Sarah O’Brien, she had earlier anticipated challenge to her evidence in view of the challenges to VE Mark Williams. Andrew Martin told me that it was not now being challenged, instead an explanation was being given. He went on to tell me that the same applied for Nesta Jones, the Bus Compliance Officer employed by Bus Users Cymru.

111. In view of Andrew Martin earlier questioning the job description and role of Nesta Jones, I explained to him the functions of a bus compliance officers and how it’s role differed to equivalents in England. I went on to describe the role of the Welsh Government providing funding not only for the bus compliance officers but also for specialist training

and advice for PSV operators in Wales, this an endeavour to raise standards. I also referred to Andrew Martin's comments to effect that one should expect teething problems on a new bus route, a feature that is not accepted, certainly within the Welsh Traffic Area.

112. There was some discussion about issues relating to driver misconduct, misconduct by staff and vehicles breaking down, they were not a reasonable excuse as they were risks that the operator took prior to registering a service. It was for an operator to decide how much to pay employees and how to treat them, clearly issues that would affect standards. I also referred to the need for effectively management and the need to recruit the right people and have sufficient capacity to deal with contingencies, including a vehicle breakdown.

113. On being reminded that VE Mark Williams had taken photographs of the operating centres at the Glendrid truck-stop in the West Midland Traffic Area and the Rhosymedre site in the Welsh Traffic Area, Andrew Martin conceded the accuracy of his evidence for that particular Sunday. My rereading the transcript confirms that eventually Andrew Martin said "*I accept what he's saying, yes.*"

114. TE Sarah O'Brien confirmed that her investigation commenced following the advertisement of four new registered services in the Wrexham area when no operator's licence had been granted in Wales.

115. On Andrew Martin being asked which issues in TE O'Brien's report he was going to question he told me: "*I don't think I am particularly questioning anything. It was just I wanted to hear the evidence again (inaudible) just in case there was and I had forgotten.*"

116. A vehicle had been seen at Wrexham bus station on 28 June 2018 when it was registered SORN on the DVLA system. Andrew Martin accepted that this was correct and explained that someone in his office called Will, a Frenchman, recorded the same number on DVLA systems twice and made a simple mistake for the vehicle which was SORN. He accepted that someone should have checked this.

117. Another concern raised related to a disc which had been issued which was registered as void in July 2017 it was seen in two separate vehicles on two separate occasions; this was not disputed by Andrew Martin who said he was unaware that the disc was void. As explained by the traffic examiner, if it was void it should not have been in the vehicle.

118. Similarly it was confirmed by the examiner that a vehicle which was registered as VOR was expected to be parked up at an operating centre, the registered operating centre in this case being in the West Midland Traffic Area. At this point Andrew Martin commented that the notice had been put in the window merely to stop someone moving the vehicle. It was put to him that this was not a proper use of the VOR procedure which was for when the vehicle was to be off road for some time.

119. The transcript at this point confirms a discussion relating to the definition of an operating centre and why vehicles were parked up at a site in Wales. Andrew Martin explained: "*Well the vehicles were being maintained there, which is why they were there... Because we had so many problems with the vehicles that they were supposed to be rotated back to Shrewsbury.*" I explained "*if you have an operator's licence in the West Midlands, every night when the work is finished the vehicles should go back to the West Midlands. ... They should not be parked up at night in Wales.*"

120. At this Andrew Martin said *"No, that's not strictly true, sir."*

121. I responded *"They can be maintained in Wales but if you're going to be operating from that maintenance provider then it is an operating centre."*

122. At this point Andrew Martin said: *"Right. Right. We accept then we've made an error."* Later he said *"on the basis of what you've just said, clearly our interpretation has been incorrect."*

123. Andrew Martin admitted that he generally used a solicitor for conveyancing although he commented that one can do it oneself, but he did not have time to do so. I remarked to him my surprise that he claimed the site in Rhosymedre was a lawful operating centre and on his failure to take professional advice.

124. There was no challenge to the evidence of TE Sarah O'Brien.

125. Similarly, the evidence of Nesta Jones was not challenged. She confirmed that it was not the case that the operator had always run services badly, indeed on one occasion Bus Users Cymru sent a standard letter on behalf of the Traffic Commissioner congratulating the operator for complying with the 95% timetable compliance target. Meeting the 95% timetable compliance target was relatively common in Wales where there are closer levels of scrutiny, when compared with England.

126. There were instances where vehicles did not have proper destination boards and explanations were given that drivers either got things wrong or were disciplined or there were mechanical issues leading to service failures.

127. Andrew Martin queried the origin of complaints, Nesta Jones's evidence was that complaints were first received from Wrexham Council which had resulted in another monitoring exercise. Nesta Jones's line manager, Barclay Davies was in the public inquiry room and was able to confirm that about four or five complaints were made regarding Easybus services around June/July 2018; people usually complain to a local authority rather than direct to Bus Users Cymru.

128. A monitoring exercise commenced on 29 January 2018 but only three days monitoring was possible as following an injury resulting in Nesta Jones being absent from work for over two months, monitoring finished on 29 May 2018. This resulted in monitoring over 11 days with 75 observations. Of those 75 observation, 5% were early, 7% were late and 28% failed to operate or went off route. This gave a punctuality/reliability rate of 60%.

129. Additionally 73% of destination displays were missing, it was explained that this was as result of two buses not having operational destination boards. As the route involved loops it would not have been possible for strangers to the area to ascertain which direction a bus was travelling in at any one time.

130. Nesta Jones referred to service 64 which was a rural one serving communities that had no access to other means of public transport. She witnessed elderly and disabled people having to walk across main roads as a result of failures and referred to the unreliability of the service causing problems for pupils during the exam season when they needed to be in school for precise times.

131. Four new services were registered, including numbers 42 and 44. Monitoring commenced on 24 June 2018 concluding on 10 July 2018 over five days with 84

observations. Of those 84 observations 3.5% were early, 20.25% were late and 20.25% failed to operate, giving an overall punctuality rate of 56%. All route number and destination displays seen at that time were correct. The report was acknowledged by the operator which indicated that it would revert back to her the following week once vehicle tracking reports were checked, but no further correspondence was received by Nesta Jones.

132. On 17 July 2018 Nesta Jones recommenced monitoring of the four new services until 8 September 2018 which was the last day of operation. The operator applied to cease operating services at short notice. Over this time Nesta Jones monitored over 13 days with 116 observations. Of those 14% were late and 29% failed to operate, giving an overall punctuality rate of 57%. Only three of the five services monitored continued to operate until the last day of operation.

133. Nesta Jones commented that service 42 to Wrexham Industrial Estate and service 44 to Barkers Lane generally achieved good reliability on the second monitoring, although service 44 failed to operate all day on 20 August due to vehicle mechanical failures. The depot at Rhosymedre continued to be used as an operating centre on a daily basis until the last day of operation.

134. Andrew Martin told me that he did not set out to run poor services but that he was ill over the summer and was not as fully in control as he should have been.

135. Alan Jackson confirmed that currently he was a bus driver for an operator based in Chester and was not a current transport manager on any licence.

136. Initially Alan Jackson was the proposed transport manager for TSL (Wales) Ltd which had not at any stage been granted an operator's licence. He confirmed that he was working for the business and undertaking part of the transport manager role. He pointed out that Neil Jones was also someone who undertook a similar role in the business.

137. I pointed out to Alan Jackson that if he was a competent transport manager he had a legal responsibility to ensure that an operator ran compliantly. Did he not spot the fact that effectively Andrew Martin, as a director, was allowing the business to run without an operator's licence in Wales?

138. Alan Jackson told me *"I knew that he shouldn't operate in Wales on an English licence I knew that,"* he went on to ask me *"But is it my position to tell him?"*

139. I pointed out that as he was qualified as a transport manager the answer was yes and it potentially went to his reputation as a transport manager. At this Alan Jackson said *"Yeah. But I don't want to lose my job, do I, because like everybody else I got a family, got a mortgage and I don't want to be out of work."* He also confirmed that he had not undertaken any transport manager refresher training since he qualified in 1988. I explained to Alan Jackson that I was unimpressed at his evidence although I accepted that he was being honest with me about his knowing that his employer was under a misapprehension about the legality of the operating centre at Rhosymedre.

140. Andrew Martin told me that he qualified as a transport manager in 1998 or 1999 and that The Skiers Lodge Ltd had held a licence since 2003 with a completely unblemished record until 2016. He told me that it was in 2016 that he delegated responsibilities to Stephen Bryce and that is when problems commenced. His intention was that once a licence was granted in Wales he would move to Wales to take up more control,

unfortunately he became ill. In view of this he put two transport managers in place, adding Neil Jones.

141. Andrew Martin started to describe other features relating to his two transport managers which were less than flattering, see earlier for reasons why they're not detailed in this written decision. He went on to tell me that he was seriously considering leaving the industry but had booked himself on a transport manager refresher course prior to notification of the public inquiry, this demonstrated his recognition that he needed to improve his knowledge of the current regulations.

142. It was confirmed by Andrew Martin that Express Airport Transfers (Europe) Ltd held a licence for about 18 months without issues, he put to me that all his problems related to local bus services. It was for that reason that he undertook that if the licence was granted for TSL (Wales) Ltd he would be happy to have an undertaking that registered services not be operated. He went on to indicate that if his reputation was lost he would ask for time to be given to find an appropriate person to take his place.

143. Potential disqualification under section 28 of the Transport Act 1985 was discussed with Andrew Martin who felt that that would be disproportionate due to this being his first public inquiry; he also reminded me that he was committed to some refresher training.

144. After a short adjournment I explained to all those present that I would be producing a written decision and explained that I had significant IT problems having at that stage lost 18 months of work, as explained in my recent Annual Report to the Welsh Government, about nine months of work was recovered but on-going IT problems made it exceptionally difficult for me to produce detailed written decisions.

145. I indicated to those present that in view of the anticipated delay in producing a written decision I wanted to give advance warning as to what my final decision was going to say. I explained that this advance notice was intended to assist in planning for the future.

146. I made it clear that I would accept the factual accuracy of all the evidence from VE Mark Williams, noting that it diverged from evidence from Andrew Martin in a number of respects, in all cases I preferred the evidence of the vehicle examiner. I went on to comment that I commended VE Mark Williams for the way that he remained measured and calm in the face of some very difficult questions. It was clear that his integrity was very much an issue at the public inquiry and for the avoidance of doubt I do not question his honesty and integrity whatsoever.

147. I went on to tell Andrew Martin that I was unimpressed at his lack of professionalism especially the fact that he had not taken legal advice on basic points. He had not kept up-to-date with transport law. I was particularly concerned at the fact that he made an attack on the integrity of a DVSA examiner which was wholly unjustified. I indicated that I accepted that he had health issues and I also accepted that he had fundamental disputes with former staff, I also made it clear that I was not making any finding either way relating to who was to blame in relation to his disputes with staff.

148. Andrew Martin was reminded that the failures identified went to issues of trust and the operator licensing regime was fundamentally based on trust. He was told that my decision would indicate refusal of a new operator licence in Wales; revocation of the licence for The Skiers Lodge Ltd; I was also minded to revoke the other licence, Express Airport Transfers (Europe) Ltd.

149. Additionally Andrew Martin was told that I was considering disqualifying him for a period of time so that he was kept out of the operator licensing regime for a period. Although I was not minded to impose a lengthy disqualification, he was told that a personal disqualification was necessary to keep him out of the operator licensing system so that he could reflect and learn. If he chose to later re-enter the industry he would need to demonstrate that he could accept constructive enquiries from DVSA examiners. Whilst the way he dealt with examiners may not have been intended as being confrontational, it was clear that it was perceived as such. During the public inquiry itself this was abundantly clear. The transcript notes me telling him that *"I hear you give evidence and I have watched you give evidence, it is quite clear that an examiner would feel that you were casting aspersions on the accuracy and the veracity and the integrity of their evidence."*

150. I went on to make it clear that there would be occasions when DVSA officials got things wrong and theoretically could also be corrupt and each case would be dealt with on its merits. In this case there was an attack without any real justification.

151. The failures also went to his repute as a transport manager and although Andrew Martin indicated that he was minded to undertake a refresher course I reminded him that I had commented during the hearing that he came across as intelligent and articulate but he had brought matters on himself by failing to seek proper professional advice on fundamental issues. Andrew Martin was told that I was thinking in terms of ordering that the disqualification be until he requalified as a transport manager because it would be useful for him to study, take exams and start afresh. He was above average intelligence and should not have a difficulty with the examinations.

152. I spelt out that whilst my formal decision would necessarily be in writing in several months, I sought to assist with the smooth transfer of the business and that is why I was giving advance notice to Andrew Martin as to what I was minded to do.

153. Alan Jackson was told that I accepted that he had been honest with me about his failures, he also accepted the evidence of DVSA examiners. He was told that I had no hesitation in confirming that I would take away his repute as a transport manager and that I would order that he requalify as one. The fact that he had not had any refresher training since he qualified many years ago was an important feature, I also noted that during the hearing he told me that he was seeking to retire relatively soon and that his age was such that he was unlikely to seek a new appointment. Alan Jackson was reminded of the clear guidance from the Upper Tribunal for those working for an operator in a transport manager role. He accepted that he was working in a transport manager role and had responsibilities - I appreciate that he was not formally accepted by a traffic commissioner as transport manager on a licence but that is an entirely different point, I still have jurisdiction and he was given due notice that I was considering his repute.

154. It was explained that there was a two-stage process which a transport manager was required to go through in the event of knowing that an operator was doing something fundamentally wrong. First there was responsibility to write to the director to set out the legal provision with an indication that it needed to stop. The second stage was to write to a traffic commissioner to say "I asked the operator to do X and Y, it did not happen and therefore I am resigning", if this happens the transport manager is protected. Alan Jackson was told that his failure to communicate his knowledge that the director's belief relating to the operating centre was fundamentally flawed was inexcusable.

155. Aside from summarising some of the features of my written decision I indicated that as it would be a number of months before it was published, it was in the interests of justice that VE Mark Williams was assured as early as possible that I accepted his evidence.

Findings of fact and material considerations.

156. A feature that would have been evident to anyone who was present at the public inquiry was that there was a remarkable change in tone from Andrew Martin after the lunchtime break. During the morning session there were substantial challenges to the veracity of DVSA evidence, with clear aspersions made in respect of the independence and professionalism of DVSA examiners. The tone was one of confrontation and challenge at every opportunity. Relatively early in the afternoon session Andrew Martin's demeanour and tone changed considerably, he also became visibly upset to the extent that at one stage I asked some questions of another witness to afford him an opportunity to compose himself. Eventually there was an acceptance of a number of factual issues.

157. Sometime after the hearing Andrew Martin posted to my office detailed notes setting out the line of questioning that he had prepared in respect of potential witnesses. I have ignored the 39 pages of notes in respect of Stephen Bryce and Neil Jones, this for the reasons set out earlier, namely that I made a decision to exclude evidence of the disputes between Stephen Bryce and Neil Jones on the one hand, and Andrew Martin on the other hand. Other tribunals might theoretically consider that evidence, however I have sought to come to findings of fact based on evidence that is both direct and relevant.

158. The 20 pages of Andrew Martin's notes prepared as an aide memoir for him in his questioning of VE Mark Williams include questions about both Stephen Bryce and Neil Jones, however his notes to assist him in his questioning of the vehicle examiner cause me some concern. This is illustrated in his planned line of questioning relating to photographs prepared and annexed to VE Mark Williams's public inquiry statement. He failed to appreciate that members of the public might take a photograph, forward it to the DVSA, and in turn for it to be shown to the investigating officer VE Mark Williams. The notes prepared by Andrew Martin make it clear that he was seeking to demonstrate that VE Mark Williams was telling untruths, with the word 'lie' or 'liar' appearing on a number of occasions.

159. It is clear to me that Andrew Martin felt that people had conspired against him and that VE Mark Williams was somehow complicit. The notes sent to me by Andrew Martin demonstrates that he has a lack of understanding not only as to the law, but as to the way in which the regulatory framework works, including the proper role of the DVSA.

160. There was a similar lack of appreciation by Andrew Martin of the role and employment status of Nesta Jones, a Bus Compliance Officer employed by Bus Users Cymru. His questions were not ones that I would have expected from an operator running registered services in Wales.

161. I reflect that Andrew Martin is not unintelligent, his voluminous paperwork and detailed preparation for the hearing demonstrates that he seeks to pay great attention to detail. He is also hard-working and tenacious as illustrated by his continuing to undertake work whilst in hospital awaiting treatment. Unfortunately whilst Andrew Martin might well have been successful as a PSV operator in France where there is a different regulatory regime, his evidence before me demonstrated a woeful lack of understanding and appreciation of the PSV licensing regime in Great Britain. The fact that Andrew Martin failed to seek out and take advice from specialist professionals has made matters worse for him.

162. Having watched Andrew Martin give his evidence and reflected on his demeanour, including his changing demeanour, I am prepared to accept that he genuinely believed that he was acting properly when he drafted paperwork which purported to suggest that premises in Wales was not an operating centre, of course the premises were where vehicles were ordinarily kept, including overnight and I have no hesitation in confirming that Andrew Martin allowed his business to operate in Wales using an operating centre in the Wrexham area without lawful authority. As I pointed out to him, there is no provision for interim PSV licences, but even if there had been such a provision, on the basis of evidence before me, I would not have granted his business an interim PSV licence.

163. Had Andrew Martin approached a specialist transport consultant or a solicitor with transport expertise he would have learned that the device that he attempted to utilise to circumvent the need for an operator's licence in Wales was unlawful and no traffic commissioner was likely to countenance such an approach to operator licensing.

164. In view of the fact that Andrew Martin was not represented before me I sought to ensure that he was not only treated fairly, but he also understood the legal issues as they arose. It is my view that during the period around the lunchtime adjournment that he reflected on my various comments and eventually he understood that his allowing PSV vehicles to be ordinarily parked overnight in the Wrexham area amounted to having an operating centre there and was unlawful. That was a contributory factor in his demeanour changing from strong challenge to one of tears.

165. Another feature that caused me concern was that Andrew Martin did not appear to have sufficient appreciation of the principle of ostensible authority. He accepted that a number of things happened including ones which very much went to the safety of the travelling public, but at all stages Andrew Martin appeared to blame someone else. I remind myself that I have excluded allegations both by and from Neil Jones and Stephen Bryce, however I point out that it is Andrew Martin who appointed them.

166. I was requested by Andrew Martin to take action against both Neil Jones and Stephen Bryce, however he has missed the point that before any transport manager can have his or her repute taken away, there is a statutory duty that he or she be given at least 28 days' notice in writing, this an example of legislation ensuring natural justice. Of course I have not commenced any proceedings in respect of Neil Jones and all Stephen Bryce, whether or not this changes might depend on the outcome of proceedings before other regulatory bodies.

167. One of the discussions that took place during the public inquiry related to potential financial penalties under section 155 of the Transport Act 2000, whether they related to the existing West Midland PSV licence held by The Skiers Lodge Ltd or whether a penalty might more properly apply to the applicant company, TSL(Wales) Ltd. Although I note that TE Sarah O'Brien felt that it was the West Midland company operating from an operating centre in Wales, the point is not an academic one as in the case of a financial penalty in England the monies are due to the Treasury; this contrasts with Wales where the financial penalty must be paid to the Welsh Government. If the outcome of my deliberations resulted in a business run by Andrew Martin continuing then I would have imposed high-level financial penalties, however in view of my decisions below relating to revoking licenses and refusing an application, there is little merit in imposing any financial penalty.

168. An illustration of Andrew Martin failing to understand his responsibility in relation to timetable failures is seen in his written response of 11 July 2018 to Nesta Jones. This includes the following: "*I am not sure that sending any report to the Traffic Commissioner at this time serves any real benefit, either Bus Users Cymru, or the travelling public. Especially*

when we have had neither the opportunity or time to tweak or adjust rosters and running boards to accommodate any timing or failure issues that we have experienced in the first 10 days of operation.” As I pointed out to Andrew Martin, I expect operators to have undertaken effective research including over local traffic matters prior to registering a service.

169. I accept all the evidence from Nesta Jones in relation to both timetable issues and the lack of destination boards.

170. Whilst I have already indicated that I accept the evidence of VE Mark Williams including where it differs from that of Andrew Martin, it may be helpful if I make specific findings in relation to a number of the issues that arose.

171. I accept the description given to me by VE Mark Williams of a conversation that he had with, Mrs Benson, the driver of the vehicle involved in a wheel loss. It might well have been the case that the meeting that the driver had with Andrew Martin was via a telephone call with him being in a hospital at the time. However I accept that Mrs Benson gave a clear impression to the examiner that she physically met with Andrew Martin. I appreciate that there is a statement on file that contradicts this, however Mrs Benson has not attended to support her employer and to be questioned and I do not attach weight to it.

172. I make a finding that the operator's lack of knowledge extended to not knowing the procedure that applied when there was a major incident, including wheel loss.

173. I accept evidence from the DVSA from SVE Martin Garlick and VE Mark Williams relating to the prohibition issued following the removal of seats from a minibus. I remind myself that Andrew Martin did not provide any evidence from a vehicle manufacturer to contradict the evidence of the two DVSA examiners. I do not question the professional competence of either of the two experienced DVSA examiners. However I do question the competence of Andrew Martin

174. Andrew Martin's expectations relating to legal lettering being taken off glass by third parties and put back on replacement glass are unrealistic and reflect his lack of appreciation of standard industry practice.

175. Although VE Mark Williams asked questions of maintenance providers and relayed comments relating to payment or otherwise of invoices, I remind myself that this was disputed by Andrew Martin. I accept that the examiner was reasonable in asking the questions that he did. Andrew Martin claimed that the point was only raised by VE Mark Williams with view to discrediting him. My finding is that it is relevant to demonstrate that at certain times at least Andrew Martin has had a poor relationship with maintenance providers, it also illustrates his lack of appreciation of the role of a vehicle examiner. VE Mark Williams was fully justified in what he did on this.

176. The earlier section setting out the evidence refers to a claim by Andrew Martin that vehicles were ordinarily parked at Gledrig when not in use, however he has not produced any supporting evidence to the hearing to substantiate his oral assertions.

177. Discussion on vehicle MOT pass rates including details of specific vehicle registration numbers are outlined in the section dealing with evidence. I prefer the evidence of VE Mark Williams to that of Andrew Martin.

178. I prefer the evidence of VE Mark Williams to that of Andrew Martin where he details discussion relating to the site at the Vanguard Industrial Estate, Battlefield Shrewsbury.

179. Andrew Martin suggested that VE Mark Williams did not really want to see a forward planner, I disagree. This unjustified comment from Andrew Martin illustrates his poor judgement and his lack of a proper appreciation of the role of DVSA examiners. For someone who is so articulate, it is especially disappointing.

180. There were substantial challenges to the evidence of VE Mark Williams on the issue of where vehicles were ordinarily parked when not in use, including on a Sunday. Andrew Martin's challenge to the evidence of VE Mark Williams illustrated his frustrations. There was clear proof to support what VE Mark Williams said with detailed photographic evidence corroborated by a notebook. Andrew Martin could not at that stage bring himself to accept all that the examiners said about the issue of illegal parking, instead he restricted himself to saying "*I'm accepting that that is probably correct on that one occasion*".

181. I accept that VE Mark Williams saw similar parking arrangements on other Sundays during his leisure time. Notwithstanding this being challenged by Andrew Martin, I have no problem with the consistency and accuracy of the evidence from VE Mark Williams on this point.

182. I accept the entirety of the evidence from TE Sarah O'Brien.

183. I accept the entirety of the evidence from Nesta Jones, Bus Compliance Officer.

184. I have sought to conduct a balancing exercise, identifying both positive and negative features. I accept that no evidence has been given to contradict Andrew Martin's assertion that he successfully ran a bus business in France and that some years ago he ran a successful business in this country. It is also clear that Andrew Martin has not been a consistent problem for regulatory authorities in this country, indeed there are a number of positive features from the DVSA evidence prior to his attempts to operate in Wales. I also note that one bus service that was monitored met or exceeded the 95% target for timetable compliance and that Bus Users Cymru issued an acknowledgement letter under authority delegated from myself.

185. It may be that Andrew Martin was let down by his employees including the two individuals who have been the subject of his excoriating comments, Neil Jones and Stephen Bryce. However as referred previously I make no finding on the accuracy of the various allegations and counter allegations and do not take them into account as they are more properly addressed by another specialist tribunal. Andrew Martin cannot absolve himself from his responsibility by really blaming others and his lack of appreciation of the concept of ostensible authority did not impress me. No one attended the public inquiry to support Andrew Martin's assertions relating to how he ran his business and to corroborate his version of individual incidents.

186. Perhaps the single most positive feature about Andrew Martin is that from the evidence before me at the hearing, I was dealing with someone who had a pitifully inadequate understanding of compliant PSV operator licensing within GB, but he was not a rogue in the ordinary sense of the word. The positive features are easily offset by the fact that having reflected at length on the evidence before me I cannot trust Andrew Martin to run a compliant PSV business, his failings are far-reaching as set out earlier in this decision. The production of a document which attempted to circumvent the law relating to an operating centre illustrates some of the fundamental problems with Andrew Martin, I reflect that considerable time and energy will have gone into the production of the document, but a fraction of that

time and energy addressed to speaking with someone with specialist knowledge would have been far more fruitful.

187. I reflect that Andrew Martin has not sought to demonstrate corroboration of positive features, this might be the result of his coming across to me as someone who is very much used to confrontation when dealing with people.

188. When I ask myself whether I trust this operator, I can only answer in the negative. I remind myself that operator licensing is based on trust and in 2012/034 Martin Joseph Formby t/a G & G Transport, the Upper Tribunal said *“traffic commissioners must be able to trust those to whom they grant operator’s licences, to operate in compliance with the regulatory regime. The public and other operators must also be able to trust operators to comply with the regulatory regime.”*

189. Judge Brodrick, in the case of 2006/277 Fenlon said:

“It has been said on many occasions that trust is one of the foundation stones of operator licensing. Traffic Commissioners must be able to trust operators to comply with all the relevant laws, rules and regulations because it would be a physical and financial impossibility to police every aspect of the licensing system all day and every day. In addition operators must be able to trust other operators to observe the relevant laws, rules and regulations. If trust between operators breaks down and some operators believe that others are obtaining an unfair commercial advantage by ignoring laws, rules or regulations then standards will inevitably slip and the public will suffer.”

190. I also remind myself of the very real commercial advantage in operating without an authorised operating centre in Wales, I reflect on comments from the Upper Tribunal at paragraph 19 of NT/2013/028 Arnold Transport and Sons Limited v DEONI:

“the impact of unfair competition is insidious in that it gradually and subtly undermines the confidence of compliant operators that their competitors will comply with the regulatory regime and thus compete fairly. What matters is the perception that other operators are competing unfairly not whether they are achieving any benefit as a result. Once rumours, of unfair competition spread, (or clear evidence of it become apparent), the assumption will be made that it must be advantageous because there would be no point in running the risks involved if it was not. It is also corrosive because once rumours of unfair competition (at the very least), begin to spread the perception that some operators are competing unfairly (whether or not they profit by doing so) has a damaging effect. It means that normally compliant operators will feel tempted to “cut corners” in relation to the regulatory regime in order to remain in business. Some may decide to resist that temptation but others are likely to succumb. The end result, if swift and effective steps are not taken to stamp out unfair competition, is that the operators who are most determined to remain compliant will be at greatest risk of being put out of business, even though they are the very operators who most deserve to remain in the industry. Trust, whether between operators and the traffic commissioner or between operators themselves, is all too easily destroyed. Rebuilding it, if that is even possible, is likely to be a long and slow process.”

191. In the case of 2007/459 KDL European Ltd the court said:

“We are satisfied of the need “to make an example of the operator so as to send a warning to the industry as a whole”. This is consistent with the approach by the five-judge Court of Session in the Thomas Muir case (see paragraph 2(xiii) above) where deterrence is expressly mentioned (“in particular for the purpose of deterring

the operator or other persons from failing to carry out their responsibilities under the legislation”). This is not by way of punishment per se but, as Lord Cullen said, is “in order to assist in the achievement of the purpose of the legislation”. We answer the question posed in 2002/17 Bryan Haulage (No.2) “is the conduct such that the operator ought to be put out of business” in the affirmative. And we judge this at the date not only of the public inquiry but also of the appeal. This is a bad case and we hope that the message sent out will be clear to all.”

192. A Stay decision in the case of Highland Car Crushers Ltd made the following comments:

“Other operators, with knowledge of the case, might be tempted to look at the circumstances and say to themselves this operator appears to be getting away with it so why should we bother to incur the expenditure of time, trouble and money to run a compliant operation? It only needs one or two operators to adopt this approach to lead to a greater risk that the operator licensing system, which contributes to road safety, will be fatally undermined.”

193. I ask myself the Priority Freight question, I answer in the negative as I do not trust the operator. I answer the Bryan Haulage question in the affirmative. My decision to revoke the existing licences and to refuse the new application is an obvious one.

194. Andrew Martin was called before me to consider his repute as a transport manager, it is clear that his specialist knowledge and competence fall woefully short of the minimum required. Good transport managers keep themselves up-to-date, often by being members of the PSV industry’s trade association, or otherwise attending a specialist transport manager refresher courses.

195. It is in Andrew Martin’s interests as well as that of the PSV industry generally that he be required to requalify as a transport manager if he were ever to seek to fill such a position within GB. Andrew Martin’s repute as a transport manager is lost and he is disqualified from holding or applying for any transport manager position until he requalifies afresh.

196. I remind myself that Andrew Martin was before me as the only potential transport manager for The Skiers Lodge Ltd and that it no longer has the required professional competence in view of my findings in relation to his transport manager repute. Had I not gone on to make adverse findings in relation to operator repute I would have granted a short period of grace, however this is academic in view of the clear loss of repute for the operator which ran illegally in Wales and operated unsafe vehicles to the extent that one suffered a wheel loss, something which can have a potentially catastrophic outcome.

197. Alan Jackson was also called before me as a transport manager and was given formal notice that his repute was an issue, the only redeeming feature that I can glean is that he was honest with me as to his knowledge that his employer was doing something fundamentally illegal and improper. I have a high regard for the position of transport manager and in one previous Annual Report to the Secretary of State I commented that a good transport manager is worth his or her weight in gold, they are professionals that keep roads far safer than would otherwise be the case. Alan Jackson has been wholly unprofessional, he did not have the guts to tell his employer that his understanding of the law was wrong. I have no hesitation in confirming that he loses his repute as a transport manager and that he will need to requalify before holding or applying for any new transport manager position. I note that Alan Jackson is unlikely to seek to requalify, which may well be the correct decision.

198. Turning to the issue of disqualification under section 28 of the Transport Act 1985, , I consider that it is appropriate that an order of disqualification be made in respect of the Skiers Lodge Ltd which has held an operator's licence in the West Midland Traffic Area. It has operated illegally in Wales, moreover bus users have not found services to be either safe or compliant with registered timetables.

199. Andrew Martin was told by me that I was minded to make an order of disqualification in respect of him as an individual. His failure to take advice reflects a level of arrogance that make it necessary to keep him out of the operator licensing system for a period of time. He has caused considerable reputational damage to the PSV industry. Whether or not other individuals have responsibility for a wheel loss does not detract from his personal responsibility as sole director of all the legal entities involved at the hearing before me.

200. There have been abject failures to comply with minimum standards in relation to road safety and basic legal principles. The unwarranted confrontational demeanour to DVSA examiners is unacceptable. I have been assisted by guidance in statutory document number 10, The Principles Of Decision Making & The Concept Of Proportionality at paragraph 100, an order of disqualification for period of two years appropriate. In this case I allow the two-year period to commence from the date of the public inquiry.

201. I have no hesitation in confirming that the application by TSL (Wales) Ltd must fail as the operator has manifestly failed to satisfy me that it is of good repute, furthermore there is no individual who has the necessary transport manager good repute and professional competence.

202. In the case of Express Airport Transfers (Europe) Ltd the sole director has been disqualified under section 28 of the Transport Act 1985 and has also lost his repute as a transport manager. Accordingly I make a finding that the operator no longer possesses the necessary good repute, neither does it have the required professional competence.

203. I accept that in the case of the Express Airport Transfers (Europe) Ltd licence that most of the failings relate to one individual, namely Andrew Martin. Accordingly I consider it proportionate to ensure that the formal revocation is not immediate so that if necessary assets could be sold and there could be a different director and another transport manager. There would be a need for assurances that Andrew Martin had no role in the business, in view of this is likely to be the case that any assets are merely sold to another entity.

204. The public inquiry for the three limited companies with Andrew Martin as sole director concluded with his making comments that perhaps he should consider a different career path. My advice to Andrew Martin is to reflect carefully prior to seeking to rejoin the PSV industry, he would need to demonstrate that he can both seek and take independent objective advice.

Decisions

205. I make decisions as set out in paragraphs 1-22, above.

Other

206. I refer to paragraph 146, VE Mark Williams is commended.



Nick Jones
Traffic Commissioner for Wales
Comisiynydd Traffig dros Ardal Drafnidiaeth Cymru

27 February 2019