



TRAFFIC COMMISSIONER FOR WALES

Red & White Services Ltd t/a Stagecoach in South Wales PG0006630

Formal decisions

- 1. The operator has 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 has 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. I record that the failings identified were remedied by the time of the latest hearing and on reflecting on the totality of evidence that a mere warning is proportionate.**

Background

4. Red & White Services Ltd t/a Stagecoach in South Wales was granted a standard international PSV operator's licence in 1993, its current authorisation is for 453 discs, at the time of the public inquiry there were 311 bus registrations in force. Services on one route in particular had been the subject of public complaint for some time, resulting in repeated timetable monitoring exercises. This, in turn, resulted in a public inquiry being convened.

Public Inquiry on 22 January 2018

5. A public inquiry was convened for 22 January 2018. In attendance on behalf of the operator were both directors and transport managers, represented by Jonathan Backhouse of Messrs Backhouse Jones, solicitors. A number of interested parties

attended including representatives from other operators and various local authorities, also in attendance was Sian Thomas, a Bus Compliance Officer employed by Bus Users Cymru who had conducted various monitoring exercises.

6. I had received advance notification that it was likely that between 20 and 30 pages of representations, written evidence and annexes would be forwarded to me to read prior to the hearing. In the event I received a 42 page submission together with 21 annexes, this was sent only a few days before the hearing. I was away both from any OTC office and my home for several days due to attending a combination of public inquiries and training sessions, including seminars attended by the operator. My first sight of the submissions on behalf of the operator was late on the Friday prior to a public inquiry commencing on Monday. I endeavoured to read the paperwork over the weekend, but felt that I could not give it the appropriate attention.

7. Another feature of concern that I discussed at the first hearing related to written comments suggesting that the operator's own statistical data provided statistics that were significantly better than those identified by the Bus Compliance Officer. It was suggested that because the operator's own Automatic Vehicle Location (AVL) data looked at a much larger set of information:

"We maintain that the AVL (data) is far more likely to produce the accurate overall reliability figures for the services, and should be relied on by the Traffic Commissioner when looking at our reliability. As (the Bus Compliance Officer) monitors some of these services by sitting on the bus for a significant part of the journey, if for whatever reason that journey is late it will potentially skew the figures, as all the observed timing points will therefore be late, whereas the AVL monitoring will show a more balanced picture as the sample is so large."

8. It was suggested that when considering whether or not there was an overall adherence to a timetable and reflecting on whether financial penalties would apply under section 155 of the Transport Act 2000, preference should be given to the operator's own data, instead of the figures produced by the Bus Compliance Officer.

9. I queried the implications of relying upon an operator's own data in preference to that of an independent Bus Compliance Officer. I indicated that the Welsh Government provides all of the funding for bus compliance officers within Wales and I would give permission for it to be represented at the adjourned hearing.

10. Initially the standard of timetable compliance on the route which caused so many public complaints was very poor, however successive monitoring exercises resulted in a clear improvement, notwithstanding the fact that the latest exercise was still far from satisfactory. I indicated that as result of comments made to me by way of explanation in relation to timetable failures I would afford an opportunity for yet another monitoring exercise, it was clear that the operator sought to attain the timetable compliance standards sought by traffic commissioners.

Public inquiry on 26 June 2018

11. Attendance at the adjourned hearing on 26 June 2018 included the following from the operator: Nigel Winter, Managing Director; David John Conway, transport manager and director; and, Peter William Henry, transport manager. The operator was again represented by Johnathan Backhouse.

12. Bus Compliance Officer Sian Thomas attended with representation from Justin Evans of EQ solicitors, funded by the Welsh Government.

13. At the conclusion of evidence and representations I indicated that the outcome would not be one which attracted any financial penalty or adverse regulation relating to registrations, however in view of the issues of principle that were discussed and which were unique to Wales, I would produce a brief written decision in order to assist with future working, recognising the limitations of the existing Statutory Guidance.

Evidence

14. There was little disagreement on factual matters raised.

15. On 28 August 2016 routes for bus services 181 from Cardiff to Graig y Rhacca and service 182 from Cardiff to Senghenydd were revised and commenced operating via Allensbank Road and Cathays. The route change was implemented in order to avoid traffic congestion on North Road and at the University Hospital of Wales. Following revision of the route, punctuality complaints were received by both Caerphilly Borough Council and Bus Users Cymru.

16. Being aware of punctuality issues with the service the operator made an application to vary timetables, this came into effect on 4 December 2016. Although timetables were varied the route remained unchanged. The first monitoring exercise over a five-day period between 5 and 15 December 2016 revealed an overall punctuality rate of a mere 47.19%.

17. The monitoring report was issued to the operator resulting in a meeting on 12 January 2017 between the Bus Compliance Officer and David Conway, Operations Director. The operator pointed out that traffic noticeably increased in volume in the pre-Christmas period and suggested that the monitoring exercise did not give a true picture of service. The Bus Compliance Officer commented to me that complaints arose from well before the pre-Christmas period, however she agreed that a new monitoring exercise should be conducted.

18. A second phase monitoring exercise was carried out over a seven-day period between 16 and 27 January 2017, this revealed a 76.09% punctuality rate. Factual findings were discussed on 6 February 2017.

19. On 8 February 2017 the Bus Compliance Officer wrote to Mr Conway requesting a written response to the exercises, this resulted in a prompt reply with full detailed explanations.

20. A third phase of monitoring took place over a 17 day period between 7 June and 18 July 2017. This revealed a 74.38% compliance rate. It was felt by the Bus Compliance Officer that despite the relatively poor performance the operator had continued to work to improve reliability on the services, but the observations showed that they were still susceptible to failing punctuality due to the volume of traffic through Llanishen and Birchgrove. She described the congestion as sporadic and unpredictable.

21. Both registrations were subject to variation in November 2017, the Caerphilly to Cardiff section of the route was removed and replaced with a new registration, service 25, Caerphilly to Cardiff Bay (instead of the city centre).

22. Punctuality checks were repeated prior to the January 2018 public inquiry, monitoring between 4 and 16 January 2018, this revealed an overall punctuality rate of 89.17%.

23. Further punctuality monitoring was conducted prior to the June 2018 hearing. Out of 223 observations the only failures were 15 late departures. This equated to an overall punctuality rate of 93.27%.

24. It was accepted that having experienced major traffic delays at the site of the University Hospital of Wales a decision was made to revise routes to improve punctuality. Prior to implementing changes in August 2016 the operator received what it thought was positive news in relation to traffic management within the hospital complex that it believed would further aid punctuality. Unfortunately it transpired that this was not the case and the well-intended road management changes at the hospital simply increased the volume of traffic elsewhere on the route; negating any improvement in punctuality at the hospital that the revision of the route had intended to achieve.

25. There was a relatively high degree of illegal on road parking (especially within the Caerphilly Borough Council area) which was not enforced as effectively as the operator would have liked.

26. An additional feature which contributed to timetable problems was major roundabout works.

27. Another problem arose as a result of a bus lane not being laid out in accord with guidelines which resulted in insufficient road space to use it. Eventually this was put right, however this feature added to congestion and delay.

28. Some of the failures were also the result of staff misconduct, there is evidence that this was promptly identified by the operator and proportion action taken.

29. A particular complaint from the operator related to the fact that Cardiff City Council officials were inconsistent in attendance at regional meetings, this was unfortunate as many of the problems stemmed from within Cardiff.

30. The overall trend was of relatively sustained improvement with the final figure only just below the target of 95% punctuality set by the Senior Traffic Commissioner. It was clear that a lot of work had been undertaken to improve punctuality.

Material considerations and findings of fact

31. I am aware of the cases of *South Bucks District Council and another v. Porter (FC) (2004) UKHL 33* and, *English v Emery Reimbold & Strick Ltd [2002 EWCA Civ 605]* in relation to written decisions generally. I appreciate that I do not need to make findings on every single point at issue and I do not do so. In any event there was no

fundamental disagreement on issues of fact. By the end of the hearing there was a near consensus on both interpretation of the facts and regulatory outcomes.

32. Dealing with the issue of passenger complaints and non-adherence to registered timetables, it was common ground that the root cause of the complaints arose from a registration that required both significant management input and external assistance if the service was to run to time. My description of the facts set out above is a mere summary, both hearings involved lengthy and detailed oral and written evidence.

33. The level of adherence to registered timetables at the commencement of the exercise was wholly inadequate by any standard, reflecting that this was an operator that does not ordinarily have such low levels of compliance, it was a concern. I remind myself that the operator trading as Stagecoach in Wales has a large number of registered services in the area, most are not to my knowledge the cause of any significant complaint.

34. I am satisfied that this is an operator that has sought to address the problems identified, some of which were relatively unusual. Bus lanes are installed with view to prioritising PSVs and speeding their flow through busy urban areas. In this case there was a problem with a bus lane that was simply too narrow to be used and this added to problems; fortunately the issue was rectified eventually.

35. One of the factors that gave cause for concern relates to illegal parking of vehicles, often blocking or impeding the throughput of buses. It is problematic that not all of the 22 local authorities within Wales have utilised enforcement powers devolved to them by the Welsh Government.

36. Addressing potential congestion is a feature that will not go away as the amount of available road space is unlikely to increase, this contrast with the demands by various users on that limited road space. Within urban areas in particular, registrations that run to timetable will have involved a considerable amount of planning and liaison with others, including local authorities. Any efficient timely service will require ongoing monitoring and, if necessary, subsequent adjustment.

37. For the operator, Mr Backhouse suggested that the evidence from the public inquiry demonstrated the system working well, with both an operator being proactive, as opposed to reactive to timetable problems, together with good professional input from the local Bus Compliance Officer.

38. My decision that the regulatory outcome was no more than a warning was an inevitable one having reflected on the totality of the evidence. It would have been wholly disproportionate to have made decisions affecting the ability of the operator relating to registering further timetables, or to impose a financial penalty.

Standard of monitoring

39. The rationale for my producing this brief written decision is a result of the initial comments on behalf of the operator to effect that AVL data should be preferred to analysis conducted by the Bus Compliance Officer. Ultimately, there was no challenge to the factual issues raised by the Bus Compliance Officer, neither was there any disagreement with her analysis.

40. As a former Traffic Commissioner for the West Midland Traffic Area I am conscious that problems relating to timetable compliance are dealt with in a very different way in England, when compared to enforcement of timetable compliance in Wales. This is something that I have referred to in successive annual reports.

41. Historically all traffic areas had a Bus Compliance Officer, however the Welsh Government provided a subsidy to enable an additional two posts within Wales. This afforded an opportunity for potentially better analysis and enforcement of timetable compliance. Indeed, the three individuals employed as bus compliance officers within Wales developed in a different way to their colleagues in England; within Wales the role developed so that the professional expertise of the bus compliance officers was acknowledged as being to a very high standard. They are respected as having expertise by all good compliant operators.

42. A consequence of the above paragraph is that the standard of timetable compliance within Wales has for well over a decade been far higher than that within England (outside of London where a wholly different system exists). This is a feature that I have previously acknowledged.

43. Written comments suggesting that internal data provided by an operator should be preferred to the objective detailed analysis by bus compliance officers caused me concern. If this was correct then it could be argued that there was little point in having the bus compliance officers and, in my view, the relatively good levels of timetable compliance in Wales may not continue to be met.

44. The Welsh Government readily accepted the invitation to fund legal representation at the adjourned hearing and it has enabled clarity on the issue. It is of course in the interests of the Welsh Government and the travelling public in Wales that there are comparatively decent levels of timetable compliance.

45. Mr Backhouse clarified the initial written comments from the operator confirming that if an operator had its own AVL data, and importantly used it properly, and additionally analysed the data, it was an invaluable tool in ensuring timetable compliance. In these cases he felt that the research and analysis by a bus compliance officer was of invaluable assistance. What happened in this case was described by Mr Backhouse as the bus compliance officer process and the operator working together and doing so properly to address a problem. He described it as an example of the system working well.

46. After representations from both Mr Backhouse and Mr Evans there was a clear consensus that ideally AVL data should be used in tandem with the monitoring and analysis from bus compliance officers. The bus compliance officers within Wales looked at the interests of people in Wales and sought to apply what devolved legislation existed in relation to buses for the benefit of the people of Wales.

47. There was universal acceptance amongst those present at the hearing that the bus compliance officers were an invaluable tool if there was to be ongoing timetable compliance. It was acknowledged that a number of operators did not have proper systems in place for ensuring timetables were capable of running in accord with statutory guidance, and additionally, there was effective monitoring and proactive action in the event of a problem. An essential feature of the bus compliance officers

within Wales was that they did not merely ask about systems and monitoring, they have developed an expertise in checking the effectiveness of an operator's systems.

48. It was my concern at comments in relation to the bus compliance officers that caused me to invite the Welsh Government to be represented. This was helpful. I am pleased that at the conclusion of the public inquiry there was a proper acknowledgement of the role of the three bus compliance officers within Wales.

49. Helpful comments were made reminding me that existing legislation provides for a Welsh Minister to add to the list of sanctions available to a traffic commissioner in the event of non-adherence with a registered timetable. Additionally the Wales Act 2017 makes provision for the relevant Welsh Minister to issue formal guidance to the Traffic Commissioner for Wales in relation to bus punctuality, this to be preferred to the statutory guidance currently issued by the Senior Traffic Commissioner which will continue to apply in England. It was noted that the Wales Act 2017 is yet to be implemented in this respect.

Decisions

50. I make decision as set out in paragraphs 1 – 3, above.

A handwritten signature in black ink, appearing to read 'Nick Jones', with a horizontal line underneath the name.

Nick Jones
Traffic Commissioner
Comisiynydd Traffig dros Ardal Drafnidiaeth Cymru

27 July 2018