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PUBLIC PASSENGER VEHICLES ACT 1981

APPLICATION BY GILLIAN GEDDES (HAPPY DAYS OUT OF SCHOOL CARE) – PM2004868

PUBLIC INQUIRY HELD AT EDINBURGH ON 3 JULY 2018

DECISION OF THE TRAFFIC COMMISSIONER

Background

1. Mrs Gillian Geddes (b.1973) of Happy Days Out of School Care, 1 Kilmartin Place, Tannochside Business Park, Uddingston, Glasgow, G71 5PH, applied for a restricted public service vehicle operator licence to operate 2 vehicles from that Kilmartin Place address. She indicated that she would be her own maintenance provider at that address, with inspections at 10 weekly intervals. She had 2 vehicles in possession CE12 EFB and YE10 YWX.

2. Companies House records show that Mrs Geddes is sole director and sole shareholder of Happy Days Out of School Care Ltd (SC440066) incorporated on 10 January 2013 and of Happy Days OSC Giffnock Ltd (SC589405) incorporated on 21 February 2018.

3. I decided that I would have to consider Mrs Geddes' application at a Public Inquiry given concerns over entity and over unlawful operating over a period of years. A DVSA Traffic Examiner had investigated Mrs Geddes' operations and had made an adverse report narrating unlawful operating.

Public Inquiry

4. The Public Inquiry duly convened in Edinburgh on 3 July 2018. Mrs Geddes was present but unrepresented. She was accompanied by her colleague Ms Marie Jones. DVSA was represented by Traffic Examiner Mr J Mullen. The usual Public Inquiry call up letter and brief had been issued and Mrs Geddes had these. Helpfully she had prepared some handwritten notes for me to consider along with her oral evidence.

5. As well as the documentation in the Public Inquiry brief, I had asked staff to search the website of the Care Inspectorate to assist with consideration of entity and to be sure Mrs Geddes was registered. Copies of the reports seen by me were copied to Mrs Geddes.

6. Mrs Geddes had provided bank statements to show financial standing. One account was in the trading, as distinct from entity name, another was in name of the limited company. Similarly, the Care Inspectorate reports were for different registered entities. Thus, entity featured as an issue which needed to be clarified.

DVSA evidence

7. DVSA's evidence was set out in the Traffic Examiner's report and associated productions. What follows is a summary.

8. DVSA became concerned that a business Happy Days Out of School Care was operating vehicles to transport children to and from day care without having a public service vehicle operator licence and by drivers who were not professionally qualified (i.e. not holding the driver CPC). The concern was that transport was part of the service for day care facilities at Uddingston Baptist Church, Lower Millgate, Uddingston and at Westwood Parish Church in East Kilbride. An investigation began in June 2017

9. On 7 June, DVSA Traffic Examiners were on duty undertaking school bus checks at St John the Baptist Primary School, Uddingston. Two minibuses (CE12 EFB and YE10 YWX) liveried as "Happy Days Out of School Care" dropped off children at the school. The DVSA Examiners spoke with the drivers and established that the minibuses were used to bring children to and from Tannochside Business Park. Neither vehicle bore an operator licence disc. The vehicles were fitted with digital tachographs (out of calibration date).

10. Neither driver Ms Ledwidge, a practice carer with Happy Days Out of School Care nor, Ms Casey, a play-work leader with Happy Days Out of School Care, had a driver licence which allowed for hire and reward driving. Neither had a digital card or driver CPC.

11. Each had a driver licence which limited them to "not for hire and reward". Ms Casey explained that her duties included providing a breakfast club for schoolchildren prior to driving them or escorting them on foot to school and vice versa after school. She said there were two minibuses at Tannochside and two at a centre at East Kilbride.

12. The Examiners contacted Mrs Geddes who attended and explained that she was the owner of Happy Days Out of School Care. She said she had looked into having an operator licence in the past and was told she did not need such nor tachograph given the small distances and that it was not the main operation. The Examiners told her the vehicles could not be operated until there was an operator licence and qualified drivers.

13. The Examiners continued their investigation given the mention of a facility at East Kilbride; Facebook notification of a second "Happy Days" at Westwood Parish Church in East Kilbride; and the incorporation of a limited company in name of Happy Days Out of School Care Limited.

14. On 14 June 2017, Mrs Geddes contacted Examiner Mullen to inform him she was not happy with the checks on 7 June 2017 and that she had been victimised and singled out by the check whereas other operators on site had not been.

15. The Examiner found that DVSA had already sent a "Welcome to the Club" letter [that is information about PSV operating and about applying for an operator licence] by recorded delivery on 25 August 2016 to the Managing Director of Happy Days out of School Care Ltd; 5 Swinburne Avenue, Blantyre, G72 9SG (this is the Companies House address for Mrs Geddes). That letter highlighted that 2 minibuses YE10 YWX and SR10 HZU may have more than 8 passenger seats and be within the definition of a PSV. The letter advised the addressee on the requirements for a PSV operator licence and offered guidance and support.

16. On 16 June 2017, Examiners visited Westwood Parish Church at 07:50am and saw 2 liveried "Happy Days" minibuses, SR10 HZU and SA10 DWD parked in an adjacent car park. A Renault Scenic vehicle left the site with children on board. On attendance at the Tannochside address, the Examiners saw the minibuses CE12 EFB and YE10 YWX parked there.

17. Checks on vehicle CE12 EFB showed it to be registered to Mrs Geddes of the Swinburne Avenue address; 17 seater; with an expired MOT – expired on 3 April 2017 therefore out of test when encountered carrying children on 7 June 2017.

18. Vehicle YE10 YWX is registered to Mrs Geddes at same address; 17 seater; with current MOT. Similar checks on SR10 HZU and SA10 DWD showed them registered to Mrs Geddes and with current MOTs.

19. The Examiners undertook digital downloads of the vehicles seen on 7 June 2017. For the period 8 May 2017 to 7 June 2017, the vehicle CE12 EFB had been used on 21 days out of 32, the majority of time it would have taken for return journeys to pick up children before and after school. The vehicle had been used almost daily without a valid MOT. For vehicle YE10 YWX, it had been driven for 22 days out of 32 for similar journeys.

20. On 27 July 2017, Examiners were on a routine roadside check at Mollinsburn. A Mr George Smith approached and introduced himself. He said he was a retired police officer who had worked for Happy Days and Mrs Geddes. He said he had warned Mrs Geddes in 2016 that she needed an operator licence and had decided to leave in November 2016 when she said she was not applying for a licence. Mr Smith provided an email statement to the Examiners (copied in the brief).

21. Mr Smith stated that he was employed by Mrs Geddes from April to November 2016 to take children to and from premises in Uddingston and East Kilbride; that in August 2016 she showed him the letter from VOSA about the need for a licence; that he advised her to contact them as not to have a licence could have serious consequences; that on 1 September she texted him that she had spoken to VOSA and she needed the licence and drivers needed the full minibuss licence; that she had spoken to another owner who had received same letter, had done nothing and heard nothing more; that he was asked to assist with maintenance and documentation of the vehicles as 2 MOTs had expired; that as she had done nothing because she had not heard from DVSA he decided to terminate his employment.

22. The Examiners interviewed Mr Smith on 4 August 2017 (copy in brief) and referred him to his emailed statement. He had been employed by Mrs Geddes as a part time driver between April and November 2016 driving 17 seater minibusses. 2 minibusses were used from Kilmartin Place. A Ms Mulraney and occasionally Mrs Geddes drove. He reported to a manager, Ms Jones. He occasionally worked from the church hall premises at Belmont Drive, East Kilbride from where 2 other minibusses operated (SE10 HZU and SA10 DWD). Of his own back, he did daily walk round checks. He was unaware of who did maintenance. Nothing was done about a faulty seat belt notified by him. His driving licence is unrestricted, i.e. did not have the 101 restriction. Mrs Geddes was aware of that restriction. He did not have a digital tachograph card but did have a driver CPC card. He considered that the driving was for hire and reward. He spoke to the VOSA helpline who advised him.

23. He confirmed his statement about Mrs Geddes getting the letter from VOSA. She had 4 vehicles. They discussed the letter and getting an operator licence. She said she would contact VOSA. She texted him to say she had contacted VOSA and conceded that drivers would have to get the restriction removed (copy of the text in the brief). She also said she'd spoken to another after school manager who informed her they had received a similar letter, ignored it and were still operating without a licence. His impression was that she had no short terms plans to apply for a licence. She said she had contacted her accountant about separating the minibusses from the business. He decided to leave.

24. He had noticed a Peugeot minibus WA62 GYE Blantyre Volunteer Limited parked at Kilmartin Place. It also drove passed him. It appeared as if a Happy Days employee was driving (no passengers).

25. On 7 September 2017, Mrs Geddes, accompanied by a colleague, attended at DVSA Bishopbriggs and was interviewed by the Examiners (copy in the brief). She explained that she had 2 business entities – herself as sole trader and the limited company. The sole trader operates from Kilmartin Place, Tannochside (and formerly from Uddingston Baptist Church) and the other from Westwood Parish Church, Belmont Drive, East Kilbride.

26. She provides, breakfast club, holiday club and out of school care, including children being picked up from school and started trading in 2010.

27. At the interview she said 2 vehicles were operated from Kilmartin Place, with 4 members of staff scheduled to drive and similarly from Westwood Parish Church site; though with only one staff member scheduled to drive. The cost is the same whether children come or from the centres by foot or vehicle.

28. She confirmed she had received the DVSA letter of 25 August 2016. She contacted DVSA, Darren Marks, and did not get a definitive answer as she stressed she did not charge extra for the services. She continued to operate the minibuses as she “deemed the fact if my employees were employed as play workers and not as drivers the fact they could drive the buses was an added bonus and because I wasn’t charging any extra whether the children were transported by bus or by foot, I didn’t think I needed an operator’s licence. I asked a number of people and businesses but couldn’t get a definitive answer. I just didn’t think it applied to me. We also had an ex-police officer who worked for us at the time driving the buses and I got him to look into it for me. Also because the buses are only used exclusively by us to transport children up and down and not hired out for hire or reward to other people I didn’t think I needed the licence”.

29. She confirmed she had employed Mr Smith from about February 2016 to November 2016. He left after Marie Jones passed her category D test so they did not need him as they had 3 drivers and 2 buses. He was asked to help as a driver at East Kilbride but refused and looked upset. She valued him. He had told her he didn’t think she needed a licence. He continued to work as a driver. Looking back, she said he was almost bordering on the obsessive but had been so helpful, alarm bells did not ring. When he left, he referred to the DVSA letter (of 25 August 2016) and that he was aware of it. She asked if he was threatening to report the company. He said he wouldn’t “but”. She asked him to leave and felt quite threatened. She told the Examiners about other matters which concerned her.

30. She accepted that she had sent the text to George Smith which he provided to the Examiners. She said she’d taken advice from Mr Smith; he was an ex-traffic cop; so she trusted his knowledge. The text message was one of many and he advised her to keep going and see what happened. He also mentioned another company and that if anything ever did happen, she was to tell them to look into the other company.

31. The interview then considered the encounter on 7 June 2016. The driver Ms Ledwidge was employed as a play worker, mostly at Kilmartin Place but could be at the Belmont Avenue site. She did not think the 101 driving code applies as Ms Ledwidge was employed as a play worker not a driver and was paid the same whether she drove or walked. She did not think the driver CPC applied as Ms Ledwidge was not employed as a driver. She did not think the tachograph rules applied. She gave the same responses in relation to Ms Casey.

32. Asked about vehicle maintenance and checks to ensure the vehicles are roadworthy, she said the driver would check the vehicle and say if anything needed fixed. She’d call B & B Commercials from whom they got the vehicles and A Tyres for tyres. The vehicle being out of test arose when an employee who used to highlight matters left. Mrs Geddes assumed they were up to date. It was a failure on her part for not double-checking. She realised now that not having a valid MOT nullified any insurance.

33. She was asked what provisions were made after the encounter on 7 June 2016. She used Blantyre Volunteer Group and East Kilbride Community Transport. Blantyre Volunteer Group was for the summer holidays and East Kilbride Community Transport from August onwards. The arrangement was verbal, confirmed by email, though she was setting up a formal agreement with East Kilbride Community Transport. She pays per mile for East Kilbride Community Transport and a set fee per day for Blantyre Volunteer Group. She has been looking at getting 9 seater and 7 seater vehicles.

34. DVSA’s conclusion was that Mrs Geddes in her capacity as sole director and sole trader knowingly operated without a PSV licence and that road safety was jeopardised by operating CE12 EFB out of test from 3 April 2017.

Care Inspectorate information

35. Perusal of the Care Inspectorate's website revealed Happy Days Out of School Care East Kilbride based at Westwood Parish Church, Belmont Drive, East Kilbride registered from 14 October 2014 (CS 2014326891) – service provider Happy Days Out of School Care Ltd (provider SP 2014012315). Inspection report, dated 24 August 2016, records that the service collects children from 11 primary schools in East Kilbride. "Some children walk with staff from school although most children are transported by either the service minibuses or staff cars".

36. Gillian Geddes Day Care of Children (CS 2009235681) (SP 2009010712) Grove House, Kilmartin Drive, Tannochside Business Park, Uddingston inspection 18 September 2017.

Financial Information

37. [REDACTED]

38. [REDACTED]

Use of the vehicles

39. In response to queries from the Central Licensing Unit at Leeds, Mrs Geddes in an e mail of 22 August 2017 her main occupation is childcare. "The minibus will be used as a sideline at weekends as a minibus transportation business serving weddings, golf outings, etc. The minibuses will be used by Happy Days Out of School Care midweek when not in use".

Maintenance and operating centre

40. The operating centre was given as Kilmartin Place Tannochside Business Park, Uddingston. Photographs in the brief show car parking spaces there and also at Westwood Parish Church.

41. The safety inspection frequency was given as 10 weekly, with safety inspections Happy Days Out of School Care Uddingston, workshop address Happy Days out of School Care – same address. "Who will carry out the safety inspections? - An owner or employee of the business. "Contractor's name or person's full name if performed internally - Gillian Geddes".

Mrs Geddes' evidence

42. Mrs Geddes provided me with a 4 page handwritten statement.

43. [REDACTED]

44. The childcare impact was that due to the smaller vehicles they can no longer offer every child a trip each day and as such children remain the building more frequently. After school children need to wait for up to 30 minutes, as they have to do numerous runs as opposed to the 2 runs if they had their minibuses.

45. She further stated that their main occupation is childcare and requires the vehicles to transport children to and from school and on trips through the holidays. She asserted that they are held in very high regard by parents. The Care Inspectorate grades are all good and very good and over the years have increased

46. Regarding finance, Happy Days is going from strength to strength and is the first choice for childcare in Uddingston and East Kilbride.
47. The vehicles are inspected by the driver on a daily basis. A manager does a thorough check on a weekly basis and all services and MOTs are carried out by B & B Commercials from whom they purchased the vehicles. The proposed vehicle maintenance – they carry out checks on a daily basis as well as a weekly manager check. They will enter into a maintenance contract with B & B Commercials.
48. The drivers hours are 08:30 – 9am; 2:45 – 3:30pm term time. Holiday club – they do not travel any more than 1 hour from their service, therefore drivers drive a maximum of 2 hours over the full day.
49. They had premises in a church hall and, as the business grew, went to better premises. They took a lease and spent £100,000 refurbishing to a high quality for the children. These premises are outwith walking distance and they purchased the minibuses. The buses are used solely to transport the children. The vehicles were not moved since the prohibition. Staff have undertaken their category D licence – both managers. If the licence is granted they will undertake their CPC.
50. In taking oral evidence from Mrs Geddes, I particularly pushed the issue of entity. This application is by her as a sole trader and she confirmed that she trades the Kilmartin Place, Tannochside, Uddingston business as a sole trader, with trading name of Happy Days Out of School Care.
51. On her accountant's advice and for risk management should something affect one of the locations, she trades the East Kilbride business as the limited company called Happy Days Out of School Ltd. She has plans to open in Giffnock in August 2018 and hence the second limited company. The split of the service into the different legal entities explained why there had to be separate registrations with the Care Inspectorate.
52. In respect of payments, the fees for the children are paid to the trading name bank account but the limited company pays the staff wages.
53. The minibuses are required by the sole trading entity (Uddingston) and the company (East Kilbride) – one minibus per service. Thus, she as Gillian Geddes will provide minibus services to Happy Days Out of School Care Ltd. The drivers of the minibuses would be Marie Jones, manager at Uddingston and Lisa Crawford, manager at East Kilbride who works for the limited company. She agreed that the use of the minibuses, as found by the Traffic Examiners, was the commercial use of the minibuses for the nursery and out of school care. She felt victimised and upset. She explained the relationship with Mr Smith. When they first opened as out of school care, the premises were close to the school. When they moved to Tannochside, they could not walk the children to and from school. She read up and spoke to lots of people, including the people from whom she bought the minibuses. She offers a service at no difference whether the child walks or takes the bus. It came across as a grey area. She found a case of a female nursery operator in England. There was no separate charging. She spoke to lots of other businesses which were operating without a PSV licence. She did not get a definite answer and so she did not apply for a licence.
54. George Smith was a nice person and obliging. He knew all along that Marie Jones was undertaking her category D licence and that there would be no need for another driver. He would come into the office and tell stories about MOTs and reporting people. When she got the letter from DVSA, she spoke to him given he was ex-traffic police. They discussed what to do. He said to go for it. There were other companies which didn't have licences. When Marie Jones got her category D licence, he was no longer required in Uddingston but they could have used him in East Kilbride. He became defensive, and looked as if he was about to cry. He came back a couple of days later and threatened her and Marie Jones that he'd take her (Mrs Geddes) down, that "I know about the PSV licence". She asked if he was going to report her. That week they were reported to

the Care Inspectorate. He approached ex staff and seemed to be very interested in Happy Days, lurking about the premises. She discussed this with the Traffic Examiners who advised going to the police but she didn't.

55. Whilst she was fully aware that she was operating without a PSV operator licence, she felt it was a grey area. Talking to others, the defence was that there was no direct charging.

56. As soon as the minibuses were stopped on 7 June 2017, the staff contacted her and she spoke to the Examiners. She went there and could see other buses. She queried why her 2 buses and drivers were spoken to and other school buses came in and then drove away. She felt it very unfair. Her grievance was that other companies were treated differently. There was another operator, which she did not name, which was doing exactly the same, indeed numerous operators. She raised this with the Examiners. This has affected her company.

57. After the prohibition and advice from Traffic Examiner Mullan, she immediately stopped using the minibuses and took them to their premises. She then had to look at alternatives for the 70 children. They used staff cars and walking. She looked at Community Transport Groups but they did not have the capacity and the costs were substantial. She curtailed trips and opted to use 9 seater vehicles. She re-iterated what she'd said in her statement about payments to the two community transport groups. She had not used commercial operators due to cost and unavailability, such not being interested in their 30 minutes of work. That had been the first option.

58. They were using 3 x 9 seaters, a 7 seater and staff cars, which are insured. They could take 90 children a day in Uddingston but can't due to transport.

59. With reference to the text sent to George Smith, (produced by him to the Examiners, page 159 of the brief), she said it was within various text messages and he had chosen to show that one. The text was about driver licences – whoever had full category D as opposed to D101. At that point, 2 managers were still undertaking the test.

60. In her closing remarks to me, Mrs Geddes spoke of the impact on her business. She had spoken to others so that they are not unlawful. George Smith had played a big factor in this and lied. He stopped when there was no longer a job for him. He had gone out of his way to check them. In the years she's operated she's gone out of her way to be compliant with everything for the Care Inspectorate. The business has grown rapidly. The Giffnock premises are within school walking distance so no transportation issues. Uddingston lost lots of money last year.

61. I put it to Mrs Geddes that she took the chance as she perceived lots of other people were getting away with it and she replied "yes".

CONSIDERATION OF THE EVIDENCE AND MY DECISION

62. Section 12 of the Public Passenger Vehicles Act 1981 provides that a public service vehicle shall not be used on a road carrying passengers for hire or reward except under a PSV operator's licence granted by the Traffic Commissioner under the 1981 Act.

63. Section 1 of the 1981 Act defines a PSV as including being a motor vehicle adapted to carry more than 8 passengers is used for carrying passengers for hire or reward. "Hire and reward" are not new words – they appear, as stated, in section 1 of the 1981 Act. It is long established that hire and reward extends to the circumstances in which the PSV is used. There may not be specific attributed element of a fee or fare or reward of some kind to the transport element of a service provided but if in an overall commercial arrangement transport is provided e.g. a golf match; hotel; concert ticket; education; conference; then the commercial context puts it into hire and reward.

64. It is long settled in law that carriage for "hire and reward" involves carrying passengers not necessarily on a contractual basis but beyond social kindness and amounting to a business activity. One of the leading cases concerns a hotel which operated courtesy coaches for anyone at

the hotel and whether paying for a room or a meal – the coaches were part of the hotel’s business: the hire and reward flowed from the payment for the room or meal or other facility. The published information on Gov.uk (and in the associated printed booklet in print from 2011) about whether a PSV licence is needed deals with this “hire and reward” issue when considering whether a licence is needed. I quote extracts from it here because this is not a “grey area” and the advice has been out there in these terms for all to see.

65. In the printed booklet and as seen on Gov.uk , this is the publicly available advice. It contains **yellow danger triangles** highlighting “Take note” sections. I highlight the text below to represent that highlighting of important advice.

Section one: Do I need a licence?

1. Who needs a PSV operator’s licence?

You will need a PSV operator’s licence if your vehicle is designed or adapted to carry nine or more passengers and payment is taken for carrying passengers (this is called ‘hire or reward’).

Take note:

It is an offence to operate a PSV without a valid licence. You could be liable for prosecution and your vehicle could be impounded.

2. Definitions

Hire or reward

Hire or reward is any payment in cash or kind which gives a person the right to be carried, regardless of whether or not that right is exercised. It is also regardless of whether or not a profit is made.

The payment may be made to the operator, the driver or any agent or representative acting on behalf of the operator.

The payment may be made by the passenger, or on the passenger’s behalf. It may be (a) a direct payment (e.g. a fare) or (b) an indirect payment (this could be an exchange for services such as a membership subscription to a club, payment for a bed in a hotel, school fees or payment for concert tickets where

travel is included; the payment does not have to be money and the right to travel does not need to be taken up).

Take note:

The courts may view indirect payments as hire or reward

66. It is intrinsic to Mrs Geddes' businesses (whether her sole trader business or the limited company business) that children are uplifted and deposited and taken on trips. Parents pay Mrs Geddes' businesses for out of hours care. There is an expectation that transport will be provided as part of the arrangements. The whole thrust of Mrs Geddes' written and oral evidence was how essential transport was and is to her service and provision to the children

67. Without any doubt, from the inception of this business model, as reflected in Mrs Geddes' evidence and the Care Inspectorate's descriptions of the provision, a PSV operator licence is required for the operation of minibuses carrying 9 passengers or more. The transport is for hire and reward. It cannot be seen in law or in practice as a "freebie" or a "tack on"..

68. Mrs Geddes was advised by DVSA in 2016 that her business needed an operator licence. She chose to ignore that advice. She chose to take a chance and try to get away with not having a licence. George Smith told her she needed a licence. Something went aglay in the relationship with him and I need not detain myself with that. It is a distraction to the fundamental that she has operated minibuses for her businesses in breach of the requirements of the Public Passenger Vehicles Act 1981. She has operated unlawfully.

69. It interested me at the Public Inquiry that Mrs Geddes wished to vent so much ire on the fact that her minibuses had been examined on 7 June 2016 and that other operators or users were not. This was an astonishing reaction given that she had been caught operating without a licence and with a vehicle out of test. DVSA Examiners had quite enough to do dealing with her operation at that point. A seam of trying to deflect attention to unspecified others also pre-occupied her.

70. In considering any application for a restricted licence, a Traffic Commissioner has to consider repute; financial standing; principal occupation; entity of the applicant; and proper arrangements to meet the licence undertakings.

71. In this case Mrs Geddes' repute is very much at issue. She engaged in unlawful operating until stopped by DVSA and that despite being advised by DVSA and by Mr Smith that she needed a licence. Her behaviour imperils her repute and I was singularly unimpressed by her seeing herself as some sort of victim, pulled out. She is no victim other than the victim of her own decision to ignore the advice from DVSA to get a licence. I have a doubt about her repute and whether she can be trusted with an operator licence. The Traffic Examiners were acting properly and proportionately in stopping her vehicles and examining her operation. They found unlawful operating and a vehicle out of test and therefore which had not been assessed for its roadworthiness. Given her business is engaged in the transportation of children as part of its service to parents, it is to the public good and in interests of public safety that the DVSA Examiners did select her vehicles and operation that day.

Parents of children do not expect their children to be transported in a vehicle which has not has an MOT test and they expect proper licensing of businesses and drivers. This is another example of a business which to the customer will appear friendly and competent, but which has been lacking in meeting road safety requirements. Operator licensing is all about road and passenger safety.

72. I find that she can meet the principal occupation test for I am satisfied that her business is with after school care and holiday care for children. She gave an interesting answer in the e mail of 22 August 2017 to the Leeds caseworker when she referred to doing weekend work and using the minibuses for a wider range of journeys. However, even if she did do such runs, I do not think the income from such would be greater than her principal business of providing care for nursery and school children. At the Public Inquiry she was able to show the necessary level of finance. However I was not satisfied by the extraordinary completion of the application form in which she had said that there was a workshop at her premises and that she or her employees would undertake the safety inspections. This is patent nonsense and reflected a lack of engagement with what was required. At the Inquiry she wrote that she would entire into a maintenance contract with B&B Commercials (the company from whom she purchased the minibuses) but she did not produce a contract.

73. I have a further difficulty with this application in that I have come to the view that the wrong entity has applied. Mrs Geddes has applied as a sole trader yet the minibuses will be used by both businesses and driven by her staff. The staff of the businesses are employed by the limited company.

It is the limited company which would be operating the vehicles. The application needs to come from the limited company. I record here that there is the positive in this case in that it does appear that Mrs Geddes followed the instruction of the Traffic Examiners on 7 June 2016 and that operation of the minibuses ceased that day.

74. I am going to refuse this application. Not without hesitation, given her unlawful operation and misplaced "victim" attitude, I will hold back from a formal finding that Mrs Geddes has no repute for if I did find against her repute, an application from the limited company of which she is sole director and shareholder could have no repute either and would fail. I refuse this application as I am not satisfied as to entity and to proper arrangements for meeting the licence undertakings.

75. It is now for Mrs Geddes to apply for a licence in name of the limited company Happy Days Out of School Care Ltd and to be very attentive to what is asked in the application form; to proactively sign a contract with an external qualified maintenance contractor for the safety inspections. By virtue of this written decision, the caseworker processing any new application can be aware that I am satisfied about principal occupation and that the limited company has sufficient finance for a licence. That should lessen the application processing time very considerably. Mrs Geddes is warned as to her repute in this jurisdiction. Any further non-compliance will imperil whether she can have or hold an operator licence.

Summary of my decision

76. I refuse this application in terms of sections 13 and 14ZC of the Public Passenger Vehicles Act 1981.

Joan N Aitken
Traffic Commissioner for Scotland

17 August 2018